

**LOCAL
GOVERNMENT LAW
AND
ADMINISTRATION**

VOLUME X

LOCAL GOVERNMENT LAW AND ADMINISTRATION IN ENGLAND AND WALES

By

THE RIGHT HONOURABLE THE
LORD MACMILLAN
A LORD OF APPEAL IN ORDINARY
AND OTHER LAWYERS

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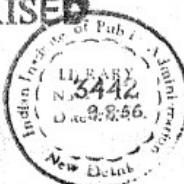
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TABLE OF CONTENTS

	PAGE
<i>Table of Abbreviations</i>	xiii
<i>Table of Statutes</i>	xv
<i>Table of Cases</i>	xlv
 OFFICIAL BUILDINGS	 1
OLD AGE PENSION COMMITTEES	7
OMNIBUSES OF LOCAL AUTHORITIES	13
OPEN AIR SCHOOLS	29
OPEN SPACES	31
ORDERS	45
ORDNANCE SURVEY	69
ORPHANS' PENSIONS	72
OUTDOOR RELIEF	74
OVERCROWDING	88
OVERHEAD WIRES	101
OXFORD, CITY OF	104
PARISH	107
PARISH ACCOUNTS	110
PARISH COUNCIL	113
PARISH COUNCILLOR	124
PARISH DOCUMENTS	128
PARISH IMPROVEMENT	130
PARISH MEETINGS	131
PARISH PROPERTY	136
PARKING PLACES	140
PARLIAMENTARY AGENTS	142
PAWNBROKERS	145
PEDLARS	148
PENALTIES	150
PENNY RATE	156
PERFORMING ANIMALS	160
PERSONS OF UNSOUND MIND	164
PETROL FILLING STATIONS	191
PETROLEUM	196
PIERS	204

TABLE OF CONTENTS

	PAGE
PILOTS -	209
PLANS -	212
PLANTING OF TREES -	224
PLEASURE BOATS -	230
POISONS -	234
POLICE -	238
POLICE, CITY OF LONDON -	250
POLICE PENSIONS -	253
POLLUTION OF RIVERS -	265
PONDS -	278
POOR LAW MEDICAL OFFICERS -	282
POOR LAW OFFENCES -	286
PORT HEALTH AUTHORITIES -	293
PORT HEALTH AUTHORITIES, ASSOCIATION OF, OF THE BRITISH ISLES -	305
PORT OF LONDON AUTHORITY -	306
POSITIVE COVENANTS -	311
POSTAL, TELEGRAPH AND TELEPHONE SERVICES -	313
POSTMASTER-GENERAL -	320
POST-MORTEM EXAMINATIONS -	324
POUND, THE -	326
PRECAUTIONS, AIR-RAID -	328
PRECEPTS -	340
PRESERVATIVES -	348
PREVENTION OF CRUELTY TO CHILDREN -	352
PREVENTION OF DISEASE IN SCHOOLS -	358
PRISONS -	367
PRIVATE ACTS -	371
PRIVATE IMPROVEMENT EXPENSES -	375
PRIVATE STREETS -	382
PRIVY COUNCIL -	411
PROBATION OFFICERS -	413
PROCESSIONS -	416
PROHIBITION, WRIT OF -	419
PROJECTIONS OVER HIGHWAYS -	425
PROVISIONAL ORDERS -	428
PUBLIC ADMINISTRATION, INSTITUTE OF -	437

TABLE OF ABBREVIATIONS

All England Law Reports	All E. R.
Attorney-General	A.-G.
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Home Office	H.O.
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Ministry of Transport	M. of T.
Public Health Acts	P.H.A.
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Rating and Valuation Act	R. & V.A.
Rural District Council	R.D.C.
Statutory Rules and Orders	S.R. & O.
Urban District Council	U.D.C.

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THE ENGLISH AND EMPIRE DIGEST

In addition to the usual citation of the reports of cases in the footnotes, there will be found a reference to the volume, page, and case number at which the case appears in the Digest. Thus:

Mullis v. Hubbard, [1903] 2 Ch. 431; 26 Digest 559, 2542.

HALSBURY'S COMPLETE STATUTES OF ENGLAND

References to Public Acts of Parliament are followed by a reference to the volume and page at which the Act or section of the Act appears in Halsbury's Complete Statutes of England. Thus:

The Local Government Act, 1933; 26 Halsbury's Statutes
295.

ALL ENGLAND LAW REPORTS

After cases heard since February, 1936, references are given to this series of reports thus:

Davis v. Lisle, [1936] 2 All E. R. 213.

TABLE OF STATUTES

		PAGE
13 Edw. 1, c. 4	(Statute of Winchester, 1285)	230
Temp. incert.	(Statutes of the Exchequer)	327
5 Statutes 138.		
5 Hen. 4, c. 10.	(Justices of the Peace (Gaols), 1403-4)	367
11 Statutes 217.		
1 & 2 Phil. & Mar., c. 12.	(Impounding of Distress Act, 1554)	327
5 Statutes 139.		
13 Eliz. c. 29.	(Incorporation of Oxford and Cambridge Uni-	
7 Statutes 11.	versities, 1571)	106
2 Will. & Mar., c. 5.	(Distress Act, 1680)	327
5 Statutes 140.		
10 Anne, c. 11.	(Public Accounts, 1711)	373
5 Geo. 1, c. 8.	(Poor Relief (Deserted Wives and Children) Act,	
12 Statutes 911.	1718)	287
10 Geo. 2, c. 22.	(Watching : City of London, 1737)	250
11 Geo. 3, c. 19.	(Oxford Improvement, 1771)	104
21 Geo. 3, c. 47.	(Oxford Improvement, 1781)	105
52 Geo. 3, c. Ixxii.	(Oxford Improvement, 1812)	105
54 Geo. 3, c. 159.	(Harbours Act, 1814)	294
18 Statutes 40.		
57 Geo. 3, c. xxix.	(Metropolitan Paving Act, 1817)	328, 426
11 Statutes 838.		
5 Geo. 4, c. 83.	(Vagrancy Act, 1824)	241, 286, 287, 289, 291
12 Statutes 913.		
6 Geo. 4, c. 81.	(Excise Licences Act, 1825)	146
10 Statutes 79.		
6 Geo. 4, c. 97.	(Universities Act, 1825)	106
4 Statutes 448.		
7 Geo. 4, c. 63.	(County Buildings Act, 1826)	1, 5
10 Statutes 536.		
10 Geo. 4, c. 44.	(Metropolitan Police Act, 1829)	155, 246, 247, 251,
12 Statutes 743.		308, 347
1 & 2 Will. 4, c. 60.	(Vestries Act, 1831)	108
6 Statutes 109.		
2 & 3 Will. 4, c. 71.	(Prescription Act, 1832)	267
5 Statutes 823.		
3 & 4 Will. 4, c. 90.	(Lighting and Watching Act, 1833)	118, 122, 248, 269
8 Statutes 1186.		
4 & 5 Will. 4, c. 76.	(Poor Law Amendment Act, 1834)	136, 287
12 Statutes 922.		
5 & 6 Will. 4, c. 50.	(Highway Act, 1835)—	
9 Statutes 50.	s. 65	426
	s. 66	426
	s. 67	278
	s. 75	327
	s. 96	152
	s. 103	152
	s. 114	105
5 & 6 Will. 4, c. 76.	(Municipal Corporations Act, 1835)	105, 239
6 & 7 Will. 4, c. 71.	(Tithe Act, 1836)	128
19 Statutes 468.		
7 Will. 4 & 1 Vict. c. 24.	(County Buildings Act, 1837)	1, 5
10 Statutes 541.		
7 Will. 4 & 1 Vict. c. 83.	(Parliamentary Documents Deposit Act, 1837) . .	224
12 Statutes 473.		

TABLE OF STATUTES

[Vol. X.]

	PAGE
1 & 2 Vict. c. 74. 10 Statutes 328.	97
2 & 3 Vict. c. 47. 12 Statutes 689, 767. } 19 Statutes 117.	147, 156, 277, 281, 308, 417, 418, 427
2 & 3 Vict. c. 71. 4 Statutes 473. 11 Statutes 257. }	147, 155
2 & 3 Vict. c. 84. 14 Statutes 502.	346
2 & 3 Vict. c. 93. 12 Statutes 775.	239
2 & 3 Vict. c. xxiv. 3 & 4 Vict. c. 50.	240
3 & 4 Vict. c. 50. 12 Statutes 782	248
3 & 4 Vict. c. 97. 14 Statutes 13.	248
4 & 5 Vict. c. 30. 2 Statutes 117.	69
5 & 6 Vict. c. 55. 14 Statutes 17.	248
5 & 6 Vict. c. 109. 12 Statutes 797.	248
6 & 7 Vict. c. 30. 5 Statutes 168.	327
6 & 7 Vict. c. 68. 10 Statutes 338.	106
7 & 8 Vict. c. 85. 14 Statutes 27.	315
7 & 8 Vict. c. 101. 2 Statutes 10.	315
8 & 9 Vict. c. 18. 2 Statutes 1113.	287, 288
8 & 9 Vict. c. 20. 14 Statutes 30.	315
8 & 9 Vict. c. 118. 2 Statutes 443.	374
9 & 10 Vict. c. 73. 19 Statutes 532.	128
9 & 10 Vict. c. 74. 13 Statutes 519.	128
10 & 11 Vict. c. 14. 11 Statutes 457.	130
10 & 11 Vict. c. 15. 8 Statutes 1223.	148
10 & 11 Vict. c. 17. 20 Statutes 186.	260, 280
10 & 11 Vict. c. 27. 18 Statutes 48.	268
10 & 11 Vict. c. 28. 10 Statutes 544.	197
10 & 11 Vict. c. 34. 13 Statutes 531.	197
10 & 11 Vict. c. 65. 2 Statutes 260.	268
10 & 11 Vict. c. 69. 12 Statutes 481.	269, 280
10 & 11 Vict. c. 89. 12 Statutes 804.	269
12 Statutes 602. } 19 Statutes 35. }	268
(Small Tenements Recovery Act, 1838)	147, 156, 277, 281, 308, 417, 418, 427
(Metropolitan Police Act, 1839)	147, 155
(Metropolitan Police Courts Act, 1839)	346
(Poor Rate Act, 1839)	239
(County Police Act, 1839)	240
(City of London Police Act, 1839)	248
(Canals (Offences) Act, 1840)	248
(Railway Regulation Act, 1840)	248
(Ordnance Survey Act, 1841)	69
(Railway Regulation Act, 1842)	248
(Parish Constables Act, 1842)	248
(Pound-breach Act, 1843)	327
(Theatres Act, 1843)	106
(Railway Regulation Act, 1844)—	
s. 13	315
s. 14	315
(Poor Law Amendment Act, 1844)	287, 288
(Lands Clauses Consolidation Act, 1845)	157, 317, 374
(Railways Clauses Consolidation Act, 1845)	152, 208, 248
(Inclosure Act, 1845)	32, 128
(Tithes Act, 1846)	128
(Baths and Washhouses Act, 1846)	130
(Markets and Fairs Clauses Act, 1847)	148
(Gasworks Clauses Act, 1847), s. 21	260, 280
(Waterworks Clauses Act, 1847)—	
s. 3	268
ss. 10—28	197
ss. 30—34	197
s. 61	268
s. 62	269, 280
s. 63	269
s. 85	268
(Harbours, Docks and Piers Clauses Act, 1847)	206, 249
(County Buildings Act, 1847)	5
(Towns Improvement Clauses Act, 1847)	152, 380,
	383, 384, 410, 425
(Cemeteries Clauses Act, 1847), ss. 20—22	260, 280
(House of Commons Costs Taxation Act, 1847)	143
(Town Police Clauses Act, 1847)	13, 248, 327, 416

	PAGE
11 & 12 Vict. c. 43. 11 Statutes 270.	(Summary Jurisdiction Act, 1848) 151, 286, 377, 379
11 & 12 Vict. c. 63.	(Public Health Act, 1848) 104
11 & 12 Vict. c. xxxvii.	(Oxford Improvement (Amendment) Act, 1848) 105
11 & 12 Vict. c. cxiii.	(City of London Sewers Act, 1848) 252
12 & 13 Vict. c. 18. 11 Statutes 291.	(Petty Sessions Act, 1849) 5
12 & 13 Vict. c. 78. 12 Statutes 485.	(House of Lords Costs Taxation Act, 1849) 143
13 & 14 Vict. c. 57. 10 Statutes 545.	(Vestries Act, 1850) 1, 137
15 & 16 Vict. c. ex.	(Tyne Improvement Act, 1852) 248
16 & 17 Vict. c. 134. 2 Statutes 210.	(Burial Act, 1853) 412
16 & 17 Vict. c. 137. 2 Statutes 320.	(Charitable Trusts Act, 1853) 34, 139
17 & 18 Vict. c. 87. 2 Statutes 214.	(Burial Act, 1854) 412
17 & 18 Vict. c. cxix.	(Oxford Poor Act, 1854) 104, 105
18 & 19 Vict. c. 120. 11 Statutes 889.	(Metropolis Management Act, 1855) 6, 41, 280, 330, 426, 427
18 & 19 Vict. c. 128. 2 Statutes 218.	(Burial Act, 1855) 412
19 & 20 Vict. c. 69. 12 Statutes 812.	(County and Borough Police Act, 1856) 230, 247
19 & 20 Vict. c. 112. 11 Statutes 959.	(Metropolis Management Amendment Act, 1856) 41
19 & 20 Vict. c. xc.	(Bournemouth Improvement Act, 1856) 205
20 & 21 Vict. c. 81. 2 Statutes 227.	(Burial Act, 1857) 412
21 & 22 Vict. c. 98.	(Local Government Act, 1858) 104
22 Vict. c. 26. 16 Statutes 170.	(Superannuation Act, 1859) 370
22 Vict. c. 27. 12 Statutes 369.	(Recreation Grounds Act, 1859) 33, 36, 38
23 & 24 Vict. c. 30. 12 Statutes 371.	(Public Improvements Act, 1860) 130
23 & 24 Vict. c. 93. 19 Statutes 544.	(Tithe Act, 1860) 128, 129
24 & 25 Vict. c. 45. 18 Statutes 101.	(General Pier and Harbour Act, 1861) 205, 206, 435, 436
24 & 25 Vict. c. 97. 4 Statutes 571.	(Malicious Damage Act, 1861), s. 32 278
24 & 25 Vict. c. 100. 4 Statutes 611.	(Offences against the Person Act, 1861) 291
24 & 25 Vict. c. 125. 10 Statutes 553.	(Parochial Offices Act, 1861) 1, 137
25 & 26 Vict. c. 19. 18 Statutes 116.	(General Pier and Harbour Act, 1861, Amendment Act, 1862) 206
25 & 26 Vict. c. 102. 11 Statutes 965.	(Metropolis Management Amendment Act, 1862) 155
26 & 27 Vict. c. 112. 19 Statutes 219.	(Telegraph Act, 1863) 101, 314, 315, 316, 317, 318, 319
27 & 28 Vict. c. 101. 9 Statutes 149.	(Highway Act, 1864) 327
28 & 29 Vict. c. 126. 13 Statutes 326.	(Prison Act, 1865)— s. 5 368 s. 56 368
28 & 29 Vict. c. eviii.	(Local Government Supplemental Act, 1865 (No. 5)) 104
30 & 31 Vict. c. 90. 16 Statutes 241.	(Revenue Act, 1867) 140
30 & 31 Vict. c. 106. 10 Statutes 557.	(Poor Law Amendment Act, 1867) 118
30 & 31 Vict. c. 134. 19 Statutes 154.	(Metropolitan Streets Act, 1867) 150, 252, 418
31 & 32 Vict. c. 5. 19 Statutes 163.	(Metropolitan Streets Act Amendment Act, 1867) 150

TABLE OF STATUTES

[Vol. X.]

		PAGE
31 & 32 Vict. c. 110.	(Telegraph Act, 1868)	101, 314, 315, 317
19 Statutes 240.		
31 & 32 Vict. c. 121.	(Pharmacy Act, 1868)	412
11 Statutes 655.		
31 & 32 Vict. c. 122.	(Poor Law Amendment Act, 1868)	108, 205
10 Statutes 558.		
31 & 32 Vict. c. lix.	(Oxford Police Act, 1868)	104, 105, 106
31 & 32 Vict. c. cliv.	(Lee Conservancy Act, 1868)	275, 308
32 & 33 Vict. c. 67.	(Valuation (Metropolis) Act, 1869)	390
14 Statutes 552.		
32 & 33 Vict. c. 73.	(Telegraph Act, 1869)	314
19 Statutes 251.		
33 & 34 Vict. c. 70.	(Gas and Water Works Facilities Act, 1870)	431,
8 Statutes 1254.		433, 434
33 & 34 Vict. c. 75.	(Elementary Education Act, 1870)	104, 105
33 & 34 Vict. c. 77.	(Juries Act, 1870)	209
10 Statutes 72.		
33 & 34 Vict. c. 78.	(Tramways Act, 1870)	435
20 Statutes 9.		
34 & 35 Vict. c. 96.	(Pedlars Act, 1871)	148, 149
11 Statutes 471.		
34 & 35 Vict. c. 105.	(Petroleum Act, 1871)	197
34 & 35 Vict. c. 112.	(Prevention of Crimes Act, 1871)	291
4 Statutes 676.		
35 & 36 Vict. c. 77.	(Metalliferous Mines Regulation Act, 1872)	196
12 Statutes 19.		
35 & 36 Vict. c. 92.	(Parish Constables Act, 1872)	248
12 Statutes 831.		
35 & 36 Vict. c. 93.	(Pawnbrokers Act, 1872)	145, 146, 147
12 Statutes 689.		
36 & 37 Vict. c. 80.	(Gas and Water Works Facilities Act, 1870,	
8 Statutes 1275.	Amendment Act, 1873)	431, 433, 434
37 & 38 Vict. c. 57.	(Real Property Limitation Act, 1874)	377, 397
10 Statutes 466.		
38 & 39 Vict. c. 17.	(Explosives Act, 1875)	433
8 Statutes 439.		
38 & 39 Vict. c. 28.	(Metropolitan Police Staff (Superannuation) Act,	
12 Statutes 835.	1875)	264
38 & 39 Vict. c. 55.	(Public Health Act, 1875)	176, 273, 295, 304, 359,
13 Statutes 623.		425, 431
s. 2		386
s. 3		384
s. 4	270, 383, 384, 391	
s. 5		212
s. 6		104
s. 23	375, 380	
s. 26		380
s. 35		380
s. 36	375, 380	
s. 38		380
s. 41	375, 380	
s. 46		381
s. 47 (3)		380
s. 49		381
s. 62	375, 381	
s. 64		278
s. 68	269, 279	
s. 69		274
s. 91		92
(1)		100
(5)		100
s. 92		58
s. 102		62
s. 104		381
s. 142		62
s. 143		324
s. 149		226

TABLE OF STATUTES

xix

38 & 39 Vict. c. 55.
13 Statutes 623.

	PAGE
(Public Health Act, 1875)—continued.	
s. 150	375, 376, 383, 384, 386, 387, 388, 389, 394, 396, 398, 399, 410
s. 151	383, 391, 398, 401
s. 152	383, 398
s. 153	303
s. 157	213, 370
s. 158	221, 381
s. 160	425
s. 164	36, 110, 225, 229
s. 171	118
s. 172	230, 232
s. 179	393
s. 180	393
(15)	
s. 181	394
s. 183	393
s. 184	119
s. 197	119
s. 213	1
s. 214	377, 396
s. 215	377
s. 228	377
ss. 229—231	105
s. 233	324
s. 240	410
s. 241	380
s. 251	380
s. 253	151, 379
s. 254	151
s. 257	152
	375, 376, 377, 378, 379, 393, 394, 396, 397, 408
s. 261	377, 379, 395
s. 265	302
s. 266	300
s. 267	300, 301, 402, 403, 405
s. 268	378, 387, 397, 401, 409
s. 269	406
s. 276	64, 57
s. 279	51
s. 287	431
s. 297	430, 431, 433
s. 298	430, 433
s. 303	431
s. 308	225
s. 317	389
s. 334	57
s. 340	269
s. 342	104
Sched. I.	104
Sched. IV.	389
(Local Loans Act, 1875)	324, 347
(Local Government Board's Poor Law Provisional Orders Confirmation (Oxford, etc.) Act, 1875)	105
(Customs Consolidation Act, 1876), s. 11	293, 308
(Commons Act, 1876)	32, 118
(Rivers Pollution Prevention Act, 1876)	46, 57, 268, 270, 271, 272, 273, 274, 275, 276, 277, 432, 433
(Prison Act, 1877)	368, 369, 370
(Metropolitan Open Spaces Act, 1877)	34
(Metropolitan Board of Works Act, 1877)	41
(Public Health (Water) Act, 1878)—	
s. 3	381

38 & 39 Vict. c. 83.
12 Statutes 242.
38 & 39 Vict. c. clxviii.
39 & 40 Vict. c. 36.
16 Statutes 290.
39 & 40 Vict. c. 56.
2 Statutes 579.
39 & 40 Vict. c. 75.
20 Statutes 316.
40 & 41 Vict. c. 21.
13 Statutes 337.
40 & 41 Vict. c. 35.
40 & 41 Vict. c. viii.
11 Statutes 1007.
41 & 42 Vict. c. 25.
20 Statutes 240,

TABLE OF STATUTES

[Vol. X.]

		PAGE
41 & 42 Vict. c. 25.	(Public Health (Water) Act, 1878)—continued.	375
20 Statutes 240.	s. 3 (4).	381
41 & 42 Vict. c. 49.	s. 5	195
20 Statutes 382.	(Weights and Measures Act, 1878)	370
41 & 42 Vict. c. 63.	(Prison (Officers Superannuation) Act, 1878)	370
13 Statutes 352.	(Telegraph Act, 1878)	101, 102, 227, 314, 315,
41 & 42 Vict. c. 76.	317, 318, 319	
19 Statutes 261.	(Highways and Locomotives (Amendment) Act,	55
41 & 42 Vict. c. 77.	1878)	
9 Statutes 173.	(House of Commons Costs Taxation Act, 1879)	143,
42 & 43 Vict. c. 17.	429	
12 Statutes 507.	(Public Health (Interments) Act, 1879)	280
42 & 43 Vict. c. 31.	(Petroleum Act, 1879)	197
13 Statutes 796.	(Summary Jurisdiction Act, 1879) : 5, 151, 286, 379, 426	
42 & 43 Vict. c. 47.	(Metropolitan Open Spaces Act, 1881)	34
42 & 43 Vict. c. 49.	(Pedlars Act, 1881)	148, 149
11 Statutes 323.	(Petroleum (Hawkers) Act, 1881)	197
44 & 45 Vict. c. 34.	(Oxford Police Act, 1881)	104, 105, 106, 107
44 & 45 Vict. c. 45.	(Medway Conservancy Act, 1881)	308
11 Statutes 479.	(Commonable Rights Compensation Act, 1882)	33
44 & 45 Vict. c. 67.	(Municipal Corporations Act, 1882)	239
44 & 45 Vict. c. xxxix.	s. 105	1, 5
44 & 45 Vict. c. elxxxiv.	s. 160	5
45 & 46 Vict. c. 15.	s. 170	105
2 Statutes 603.	s. 197	247
45 & 46 Vict. c. 50.	s. 257 (1)	105
10 Statutes 576.	(2)	105
	(5)	105
45 & 46 Vict. c. 56.	(Electric Lighting Act, 1882)	102, 434
7 Statutes 686.	(Public Works Loans Act, 1882)	206
45 & 46 Vict. c. 62.	(Summary Jurisdiction Act, 1884)	151
12 Statutes 279.	(Prison (Officers' Superannuation) Act, 1886)	370
47 & 48 Vict. c. 43.	(Oxford University (Justices) Act, 1886)	106
11 Statutes 356.	(Riot (Damages) Act, 1886)	239, 252
49 & 50 Vict. c. 9.	(Medical Act, 1886)	412
13 Statutes 363.	(Open Spaces Act, 1887)	34
49 & 50 Vict. c. 31.	(Public Works Loans Act, 1887)	206
11 Statutes 357.	(Superannuation Act, 1887)	370
49 & 50 Vict. c. 38.	(Coroners Act, 1887)—	
12 Statutes 844.	s. 21	325
49 & 50 Vict. c. 48.	(3)	325
11 Statutes 717.	s. 23	325
50 & 51 Vict. c. 32.	(Customs and Inland Revenue Act, 1888)	149
2 Statutes 280.	(Electric Lighting Act, 1888)	434
50 & 51 Vict. c. 37.	(Railway and Canal Traffic Act, 1888)	435
12 Statutes 291.	(Hawkers Act, 1888)	148
50 & 51 Vict. c. 67.	(Local Government Act, 1888)	176, 230, 247
16 Statutes 566.	s. 3 (iv)	1, 5
50 & 51 Vict. c. 71.		
3 Statutes 760.		
51 & 52 Vict. c. 8.		
16 Statutes 579.		
51 & 52 Vict. c. 12.		
7 Statutes 702.		
51 & 52 Vict. c. 25.		
14 Statutes 229.		
51 & 52 Vict. c. 33.		
16 Statutes 679.		
51 & 52 Vict. c. 41.		
10 Statutes 656.		

51 & 52 Vict. c. 41.
10 Statutes 686.

	PAGE
(Local Government Act, 1888)— <i>continued.</i>	
s. 14	275, 277, 432
(3)	275, 432
s. 24 (2) (j)	246
s. 30	5
(3)	4
s. 34 (4)	5
s. 40 (8)	41
s. 41	6
s. 52	104
s. 57	109
s. 59 (6)	373
s. 64	5
(3)	5
s. 65	1, 5, 6
s. 68 (4)—(6)	347
(9)	347
s. 69	309
s. 93	5
(County Courts Act, 1888).	424
(Public Health (Buildings in Streets) Act, 1888) . . .	219, 222
(Sea Fisheries Regulation Act, 1888)	202
(Town Police Clauses Act, 1889)	13, 28
(Arbitration Act, 1889), s. 12 (e)	394
(Regulation of Railways Act, 1889)	248
(Interpretation Act, 1889)	48, 107, 125, 351
(Local Government Board's Provisional Orders	
Confirmation Act, 1889)	104
(Lunacy Act, 1890)	173
s. 8	184
s. 10	175, 184
s. 11	176, 184
s. 13	175, 180, 181, 182
s. 14	175, 180, 181
s. 15	175, 180, 181, 182
s. 16	175, 180, 182
s. 19	176
s. 20	176, 181
s. 21	176, 181
s. 22	179
s. 24	181
(1)	181
s. 25	181
s. 26	182
s. 27	175
(3)	167
(4)	180
s. 28	176
s. 29	181
(1)—(3)	176
s. 32	176
s. 34	177, 179, 185
s. 38	177, 180, 185
(0) (n)	181
(b)	179
s. 39	185
s. 40	177
s. 41	178
s. 44	180
s. 46	190
s. 47	178, 180, 180

TABLE OF STATUTES

[Vol. X.]

53 Vict. c. 5. 1 Statutes 17.	(Lunacy Act, 1800)—continued.	PAGE
	s. 49	178, 180, 185
	s. 50	171, 178
	s. 53	179
	s. 55	186
	(6)	180
	(8)	180
	s. 56	186
	s. 57	179, 180, 182
	s. 58	185
	s. 59	179
	(1)	181
	s. 64	179
	s. 65	179, 181
	s. 72	185
	s. 73	181
	s. 74	185
	s. 75	181
	s. 76	181
	s. 77	185
	(1)	179
	(2)	179
	s. 78	181, 186
	s. 79	177, 180
	s. 81	182
	s. 83	181, 186
	s. 85	179, 180
	s. 86	179
	s. 100	178
	ss. 116 <i>et seq.</i>	178
	s. 132	178
	s. 187	189
	(2)	189
	s. 188	189
	s. 191	189
	(1)—(4)	189
	s. 193	189
	s. 194	189
	s. 198	189
	s. 199 (1)	189
	s. 202	182
	s. 238	174, 187
	s. 242	174, 187
	s. 243	174, 187
	s. 247	174
	ss. 248—254	187
	s. 255	182
	s. 266	188
	s. 269	187
	(2)	180
	(8)	180
	s. 271	182
	(2)	188
	s. 273	174, 188
	s. 275	178, 188
	(5)	178
	s. 276	188
	s. 283	188
	(4)	188
	s. 288	188
	s. 289	169, 174
	ss. 292—295	169, 174
	s. 296	169
	s. 297	169, 174
	s. 298	169
	s. 299	169
	s. 300	169, 171, 178
	s. 301	169, 178

TABLE OF STATUTES

xxiii

		PAGE
53 Vict. c. 5. 11 <i>Statutes</i> 17.	(Lunacy Act, 1890)—continued.	
	s. 302	169
	s. 303	169, 174
	ss. 304—314	169
	s. 315	165
	s. 322	168
	s. 324	168
	s. 341	165
	Sched. II.	175, 176, 184, 187
	Sched. III.	173, 180
	Sched. IV.	166
53 & 54 Vict. c. 15.	(Open Spaces Act, 1890)	34
53 & 54 Vict. c. 34.	(Infectious Disease (Prevention) Act, 1890)	60, 62
13 <i>Statutes</i> 816.		
53 & 54 Vict. c. 45.	(Police Act, 1890)	245, 246, 251, 255
12 <i>Statutes</i> 850.		
53 & 54 Vict. c. 59.	(Public Health Acts Amendment Act, 1890)	152, 315
13 <i>Statutes</i> 824.	s. 2	225
	s. 3	225
	s. 11 (2)	383, 387
	s. 13	103, 314, 319
	s. 14	314
	s. 15	314
	(1)	319
	s. 17 (2)	62
	s. 19	375
	s. 20 (2)—(4)	381
	s. 22	380
	s. 28	62
	s. 36	380
	s. 41	383, 398
	s. 43	225, 226
	s. 44	119, 231
	(1)	43
	s. 45	225, 229
53 & 54 Vict. c. cxxiii.	(Oxford Corporation Act, 1890)	106
53 & 54 Vict. c. ccxliii.	(London County Council (General Powers) Act, 1890)	41, 249, 250
11 <i>Statutes</i> 1018.	(Railway and Canal Traffic (Provisional Orders) Amendment Act, 1891)	435
54 & 55 Vict. c. 12.	(Brine Pumping (Compensation for Subsidence) Act, 1891)	432
14 <i>Statutes</i> 249.	(Highways and Bridges Act, 1891)	55
54 & 55 Vict. c. 40.		
12 <i>Statutes</i> 55.	(Lunacy Act, 1891)	165
54 & 55 Vict. c. 63.	s. 2	175
9 <i>Statutes</i> 102.	s. 3	176, 182
54 & 55 Vict. c. 65.	s. 7	177, 180
11 <i>Statutes</i> 144.	s. 10	186
	s. 16	187
	s. 17	180
54 & 55 Vict. c. 76.	(Public Health (London) Act, 1891)—	
11 <i>Statutes</i> 1025.	s. 2	92
	s. 47	304
	s. 111	308
54 & 55 Vict. c. lxxxi.	(Local Government Board's Provisional Orders Confirmation (No. 10) Act, 1891)	275
54 & 55 Vict. c. lxxvii.	(London Overhead Wires Act, 1891)	103, 104
55 & 56 Vict. c. 40.	(Superannuation Act, 1892)	370
16 <i>Statutes</i> 686.		
55 & 56 Vict. c. 43.	(Military Lands Act, 1892)	433
17 <i>Statutes</i> 575.		
55 & 56 Vict. c. 57.	(Private Street Works Act, 1892)	388
9 <i>Statutes</i> 193.	s. 1	398, 409
	s. 2	376, 398
	s. 3	376, 398
	s. 5	383, 384, 399
	s. 6	* 390

	PAGE
55 & 56 Vict. c. 57.	
9 Statutes 193.	
(Private Street Works Act, 1892)— <i>continued.</i>	
s. 6 (1).	398, 399
(2).	399, 402
(3).	402, 403, 404
s. 7	402, 403, 406, 409
s. 8	401
(1).	405, 406
(2).	403
(3).	406
s. 9 (1).	399
(2).	379, 400
s. 10	400, 401, 404
s. 11	406
s. 12	375, 376, 409
(1).	406, 407
(2).	407
(3).	407
s. 13	375, 376, 408
(1).	408
(2).	408
s. 14	376, 407, 408
s. 15	409
s. 16	391, 401
s. 18	410
s. 19	383
s. 20	383
s. 21 (1)	409
(2).	410
s. 22	401
s. 25	380, 398
s. 26	401
Sched.	399, 400, 402
(Telegraph Act, 1892)	102, 314, 318, 319
55 & 56 Vict. c. 59.	
19 Statutes 282.	
55 & 56 Vict. c. exci.	
56 & 57 Vict. c. 14.	
18 Statutes 1013.	
56 & 57 Vict. c. 26.	
13 Statutes 368.	
56 & 57 Vict. c. 31.	
20 Statutes 345.	
50 & 57 Vict. c. 55.	
56 & 57 Vict. c. 61.	
13 Statutes 455.	
56 & 57 Vict. c. 66.	
18 Statutes 1016.	
56 & 57 Vict. c. 73.	
10 Statutes 773.	
(Mersey and Irwell Joint Committee Act, 1892)	276
(Statute Law Revision Act, 1893)	108
(Prison (Officers' Superannuation) Act, 1893)	370
(Rivers Pollution Prevention Act, 1893)	268, 272, 274, 277
(Metropolis Management (Plumstead and Hackney) Act, 1893)	339
(Public Authorities Protection Act, 1893)	227, 321
(Rules Publication Act, 1893)	47
(Local Government Act, 1894)	108, 113, 122, 131, 136, 324, 431
s. 4	3
s. 5 (2) (c)	137
s. 6 (1).	109, 118
(e)	33
s. 7	248
(1).	118, 134
(4).	132
s. 8 (1).	118, 278
(a)	1
(b)	1, 33, 138
(d)	33, 36, 225
s. 13 (1)	119, 135
(2).	119
s. 14	33
(2).	134
(5).	135
(6).	111, 135
s. 16 (1)	135
s. 17	128

TABLE OF STATUTES

XXV

		PAGE
56 & 57 Vict. c. 73. 10 Statutes 773.	(Local Government Act, 1894)—continued.	
	s. 19 (4)	109, 134
	(5)	134
	(6)	137
	(8)	135
	s. 21	212
	s. 27	146
	s. 32	146
	s. 33	109
	s. 59 (3)	3
	s. 63	64
	s. 71	62
56 & 57 Vict. c. xxxii.	(Local Government Board's Provisional Orders Confirmation (No. 16) Act, 1893).	275
56 & 57 Vict. c. cxxxi. 11 Statutes 1117.	(London County Council (General Powers) Act, 1893)	6
57 & 58 Vict. c. 57. 1 Statutes 416.	(Diseases of Animals Act, 1894), s. 52 (vii)	269
57 & 58 Vict. c. 60. 18 Statutes 162.	(Merchant Shipping Act, 1894)	209, 210, 231, 239
57 & 58 Vict. c. clxvi.	(West Riding of Yorkshire Rivers Act, 1894)	276
59 & 60 Vict. c. 19. 13 Statutes 871.	(Public Health Act, 1896)	351
59 & 60 Vict. c. 48. 14 Statutes 252.	(Light Railways Act, 1896)	103, 434
60 & 61 Vict. c. 26. 11 Statutes 359.	(Metropolitan Police Courts Act, 1897)	6
61 & 62 Vict. c. 34. 20 Statutes 345.	(Rivers Pollution Prevention (Border Councils) Act, 1898)	275
61 & 62 Vict. c. 38. 10 Statutes 833.	(Parish Fire-engines Act, 1898)	118
61 & 62 Vict. c. 41. 13 Statutes 369.	(Prison Act, 1898)	368
61 & 62 Vict. c. 60. 9 Statutes 955.	(Inebriates Act, 1898)	9
61 & 62 Vict. c. cxxxi. 11 Statutes 1234.	(London County Council (General Powers) Act, 1898)	41
61 & 62 Vict. c. eel.	(Middlesex County Council Act, 1898)	275
62 & 63 Vict. c. 14. 11 Statutes 1225.	(London Government Act, 1899)	339
	s. 4	109
	s. 11	347
	(1)	109
	(2)	347
	s. 16 (1) (a)	109
	s. 17	109
	s. 23	110
	Sched. II.	6
62 & 63 Vict. c. 19. 7 Statutes 705.	(Electric Lighting (Clauses) Act, 1899)	48, 102
62 & 63 Vict. c. 30. 2 Statutes 607.	(Commons Act, 1899)	32
62 & 63 Vict. c. 32.	(Elementary Education (Defective and Epileptic Children) Act, 1899)	29
62 & 63 Vict. c. 33. 7 Statutes 124.	(Board of Education Act, 1899)	139
62 & 63 Vict. c. 38. 19 Statutes 288.	(Telegraph Act, 1899)	314, 310
63 & 64 Vict. c. 32. 18 Statutes 443.	(Merchant Shipping (Liability of Shipowners and others) Act, 1900)	309
63 & 64 Vict. c. cxvii. 1 Edw. 7, c. elix.	(Loo Conservancy Act, 1900)	275
1 Edw. 7, c. cxlv.	(Pier and Harbour Orders Confirmation (No. 2) Act, 1901)	205
2 Edw. 7, c. 17. 11 Statutes 729.	(Lowestoft Corporation Act, 1901)	205
2 Edw. 7, c. 28. 9 Statutes 964.	(Midwives Act, 1902)	52
2 Edw. 7, c. 42.	(Licensing Act, 1902)	355
	(Education Act, 1902)	105

	PAGE
2 Edw. 7, c. cxx.	
4 Edw. 7, c. 24.	
<i>19 Statutes</i> 289.	
4 Edw. 7, c. 28.	
<i>20 Statutes</i> 408.	
4 Edw. 7, c. cciii.	
4 Edw. 7, c. cccliv.	
<i>11 Statutes</i> 1260.	
5 Edw. 7, c. 23.	
<i>9 Statutes</i> 362.	
5 Edw. 7, c. cxi.	
<i>11 Statutes</i> 1277.	
6 Edw. 7, c. 14.	
<i>13 Statutes</i> 904.	
6 Edw. 7, c. 25.	
<i>12 Statutes</i> 382.	
6 Edw. 7, c. 48.	
<i>18 Statutes</i> 492.	
6 Edw. 7, c. lxxxvi.	
7 Edw. 7, c. 17.	
<i>11 Statutes</i> 365.	
7 Edw. 7, c. 32.	
<i>8 Statutes</i> 802.	
7 Edw. 7, c. 40.	
<i>15 Statutes</i> 766.	
7 Edw. 7, c. 53.	
<i>13 Statutes</i> 911.	
7 Edw. 7, c. cxxxvi.	
7 Edw. 7, c. exl.	
<i>14 Statutes</i> 599.	
8 Edw. 7, c. 25.	
<i>17 Statutes</i> 600.	
8 Edw. 7, c. 33.	
<i>19 Statutes</i> 293.	
8 Edw. 7, c. 36.	
<i>1 Statutes</i> 257.	
8 Edw. 7, c. 40.	
<i>20 Statutes</i> 580.	
8 Edw. 7, c. 48.	
<i>13 Statutes</i> 39.	
8 Edw. 7, c. 55.	
<i>11 Statutes</i> 735.	
8 Edw. 7, c. 67.	
<i>4 Statutes</i> 767.	
(Local Government Board's Provisional Orders Confirmation (No. 12) Act, 1902).	276
<i>(Wireless Telegraphy Act, 1904).</i>	314, 316
(Weights and Measures Act, 1904)	100, 104, 105
(Thames River Steamboat Service Act, 1904)	209
(London County Council (General Powers) Act, 1904)	229
(Provisional Order (Marriages) Act, 1905)	433
(London County Council (General Powers) Act, 1905)	41
(Alkali, etc., Works Regulation Act, 1906)	58, 269,
	270, 432
(Open Spaces Act, 1906)	33, 34, 35, 36, 41, 42,
	225, 229
(Merchant Shipping Act, 1906)	231
(County Office Site (London) Act, 1906)	6
(Probation of Offenders Act, 1907)	413
(Public Health (Regulations as to Food) Act, 1907)	351
(Notification of Births Act, 1907)	46, 52
(Public Health Acts Amendment Act, 1907)	152, 232
s. 3 (1).	57
s. 15	217, 218
s. 16	217
s. 17 (1)	60, 67
s. 19	383
s. 22	426
s. 25	380
s. 27	193
s. 30	279
s. 31	57
s. 34	380
s. 36	380
s. 37	380
s. 39	380
s. 40	375
s. 43	381
s. 45	375
s. 46	375
s. 74	375
s. 80	60, 62
s. 94	231, 232
(3)	231
(5)	231
(National Trust Act, 1907)	38, 39
(City of London (Union of Parishes) Act, 1907)	110, 252
(Naval Lands (Volunteers) Act, 1908)	433
(Telegraph (Construction) Act, 1908), s. 2	314
(Small Holdings and Allotments Act, 1908)	40, 49, 139
(Old Age Pensions Act, 1908)	7
(Post Office Act, 1908)	150, 316, 320, 321, 322,
	323, 324
(Poisons and Pharmacy Act, 1908)	412
(Children Act, 1908)	147

	PAGE
8 Edw. 7, c. 68. 20 Statutes 350.	306, 307
8 Edw. 7, c. xcvi.	
9 Edw. 7, c. 10. 16 Statutes 741.	
9 Edw. 7, c. 14. 12 Statutes 512.	
9 Edw. 7, c. 30. 19 Statutes 352.	
9 Edw. 7, c. 34. 7 Statutes 749.	
9 Edw. 7, c. 40. 12 Statutes 858.	
9 Edw. 7, c. 47. 9 Statutes 207.	
9 Edw. 7, c. lxvii.	
10 Edw. 7 & 1 Geo. 5, c. 19.	
10 Statutes 843.	
10 Edw. 7 & 1 Geo. 5, c. 24. (Licensing (Consolidation) Act, 1910)	106, 355
9 Statutes 985.	
1 & 2 Geo. 5, c. 27. 1 Statutes 373.	
1 & 2 Geo. 5, c. 39. 19 Statutes 300.	
1 & 2 Geo. 5, c. 50. 12 Statutes 82.	
2 Geo. 5, c. 3. 8 Statutes 613.	
2 & 3 Geo. 5, c. 31. 18 Statutes 488.	
(Protection of Animals Act, 1911) s. 7	162 327
(Telegraph (Construction) Act, 1911)	314, 315
(Coal Mines Act, 1911)	196
(Shops Act, 1912)— s. 12 (1) (a) (b)	323 323
(Pilotage Act, 1913) s. 7 s. 8 s. 17 s. 26 s. 28 s. 46 s. 48	209 210 210 210 211 211 210 210, 211
(Tees Conservancy Act, 1912)	232
(London County Council (General Powers) Act, 1912)	203
(Mental Deficiency Act, 1913)	433
(Ancient Monuments Consolidation and Amend- ment Act, 1913)	103, 435
(Criminal Justice Administration Act, 1914)	151, 152,
4 & 5 Geo. 5, c. 91. 6 Statutes 1161.	154, 155, 413
(Welsh Church Act, 1914)	109, 371
(Severn Navigation Act, 1914), s. 16	232
(Fishery Harbours Act, 1915)	436
(Milk and Dairies (Consolidation) Act, 1915)	153
(Telegraph (Construction) Act, 1916), s. 1	314
(Defence of the Realm (Acquisition of Land) Act, 1916)	31
(Finance Act, 1918)	320
(Ministry of Health Act, 1919)	432
(Housing, Town Planning, etc., Act, 1919)	158
(Government War Obligations Act, 1919)	196
(Police Act, 1919)	243, 247, 250, 251
12 Statutes 867.	

	PAGE
9 & 10 Geo. 5, c. 50. 3 Statutes 435.	206
9 & 10 Geo. 5, c. 57. 2 Statutes 1176.	322, 422
9 & 10 Geo. 5, c. 58. 3 Statutes 448.	37, 40
9 & 10 Geo. 5, c. 59. 1 Statutes 209.	39
9 & 10 Geo. 5, c. 67. 13 Statutes 374.	370
9 & 10 Geo. 5, c. 72. 13 Statutes 963.	298
9 & 10 Geo. 5, c. 91. 3 Statutes 451.	69
9 & 10 Geo. 5, c. 94. 11 Statutes 748.	47, 412
9 & 10 Geo. 5, c. 100. 7 Statutes 754.	423, 434
9 & 10 Geo. 5, c. xxxiv.	249
9 & 10 Geo. 5, c. lxxxiv.	38
10 & 11 Geo. 5, c. 17. 10 Statutes 332.	97, 160
10 & 11 Geo. 5, c. 28. 8 Statutes 1287.	434
10 & 11 Geo. 5, c. 36. 16 Statutes 864.	263
10 & 11 Geo. 5, c. 49. 20 Statutes 593.	7
10 & 11 Geo. 5, c. 72. 19 Statutes 98.	152
10 & 11 Geo. 5, c. 80. 19 Statutes 200.	433
10 & 11 Geo. 5, c. xxiv.	232
10 & 11 Geo. 5, c. xxvii.	252
10 & 11 Geo. 5, c. xxxvi.	232
10 & 11 Geo. 5, c. exxi.	207
10 & 11 Geo. 5, c. exlvi.	206
10 & 11 Geo. 5, c. clxxiii. 18 Statutes 592.	209, 233,
11 & 12 Geo. 5, c. 31. 12 Statutes 873.	249, 277, 307, 308, 309, 310, 311, 401
11 & 12 Geo. 5, c. 44. 20 Statutes 289.	(Police Pensions Act, 1921) 242, 246, 248, 252, 253,
11 & 12 Geo. 5, c. 51. 7 Statutes 130.	254, 255, 256, 257, 258, 259, 260, 261,
	262, 263, 264, 433
11 & 12 Geo. 5, c. 55. 14 Statutes 362.	432
11 & 12 Geo. 5, c. 67. 11 Statutes 1343.	(Education Act, 1921) 361
11 & 12 Geo. 5, c. lxxiv.	105
11 & 12 Geo. 5, c. lxxviii.	120, 135
	110
	29
	40, 434
	359
	110
	135
	120
	105
	40, 434
	434
11 & 12 Geo. 5, c. 55. 14 Statutes 362.	(Railways Act, 1921) 347
11 & 12 Geo. 5, c. 67. 11 Statutes 1343.	347
11 & 12 Geo. 5, c. lxxiv.	241
11 & 12 Geo. 5, c. lxxviii.	275
	(Local Authorities (Financial Provisions) Act, 1921), s. 2.
	(Liverpool Corporation Act, 1921)
	(Lee Conservancy Act, 1921)

		PAGE
12 & 13 Geo. 5, c. 17. 9 Statutes 641.	(Finance Act, 1922), s. 31 (1)	263
12 & 13 Geo. 5, c. 35. 13 Statutes 977.	(Celluloid and Cinematograph Film Act, 1922)	153
12 & 13 Geo. 5, c. 39. 18 Statutes 804.	(Oil in Navigable Waters Act, 1922)	196, 202, 270
12 & 13 Geo. 5, c. 51. 1 Statutes 310.	(Allotments Act, 1922)	39
12 & 13 Geo. 5, c. 54. 8 Statutes 881.	(Milk and Dairies (Amendment) Act, 1922)— s. 4	350
12 & 13 Geo. 5, c. 59. 10 Statutes 863.	s. 5	153
12 & 13 Geo. 5, c. xxxvi.	(Local Government and other Officers' Superannuation Act, 1922)	53
12 & 13 Geo. 5, c. lxx.	(Oxford and St. Albans Wine Privileges (Abolition) Act, 1922).	106
13 & 14 Geo. 5, c. 9. 1 Statutes 80.	(Port of London and Midland Railway Act, 1922)	307
13 & 14 Geo. 5, c. 11. 12 Statutes 895.	(Agricultural Holdings Act, 1923)	422
13 & 14 Geo. 5, c. 16. 8 Statutes 780.	(Special Constables Act, 1923), s. 1 (1)	261
13 & 14 Geo. 5, c. 18. 10 Statutes 875.	(Salmon and Freshwater Fisheries Act, 1923)	270, 271, 275, 278, 280, 432, 436
13 & 14 Geo. 5, c. 20. 12 Statutes 181.	(War Memorials (Local Authorities' Powers) Act 1923)	120
13 & 14 Geo. 5, c. 32. 10 Statutes 365.	(Mines (Working Facilities and Support) Act, 1923)	196, 197
13 & 14 Geo. 5, c. 38. 7 Statutes 226.	(Rent and Mortgage Interest Restrictions Act, 1923)	97
13 & 14 Geo. 5, c. xi.	(Education (Institution Children) Act, 1923), s. 1 (1)	29
13 & 14 Geo. 5, c. xxxiv.	(Port of London (Finance) Act, 1923)	307
14 & 15 Geo. 5, c. 20. 9 Statutes 372.	(Port of London (Dock Charges) Act, 1923)	307, 309
14 & 15 Geo. 5, c. 32. 16 Statutes 932.	(Marriages Validity (Provisional Orders) Act, 1924)	433
14 & 15 Geo. 5, c. 33. 20 Statutes 596.	(Pensions (Increase) Act, 1924)	263
14 & 15 Geo. 5, c. 34. 19 Statutes 172.	(Old Age Pensions Act, 1924)	7
14 & 15 Geo. 5, c. 38. 20 Statutes 470.	(London Traffic Act, 1924)	48, 141, 417
14 & 15 Geo. 5, c. lxxv. 11 Statutes 1366.	(National Health Insurance Act, 1924)	72
15 Geo. 5, c. 14. 13 Statutes 1001.	(London County Council (General Powers) Act, 1924)	427
15 Geo. 5, c. 18. 17 Statutes 892.	(Housing Act, 1925)	40, 49, 92, 100, 423
15 Geo. 5, c. 20. 15 Statutes 177.	(Settled Land Act, 1925), s. 56	33
15 Geo. 5, c. 22. 15 Statutes 524.	(Law of Property Act, 1925)— s. 80 (2)	312
	(4)	312
	s. 84	312
	ss. 90—98	379
	ss. 99—109.	379, 408
	s. 110	408
	s. 193	32
	s. 194	32
15 & 16 Geo. 5, c. 27. 2 Statutes 405.	(Land Charges Act, 1925)— s. 10	312
	(1) Class D.	312
	s. 15	397, 408
	(1)	380
	(4)	379
15 & 16 Geo. 5, c. 38. 1 Statutes 385.	(Charitable Trusts Act, 1925)	139
L.G.L. X.—c.	(Performing Animals (Regulation) Act, 1925)	160, 161, 162, 163

	PAGE
15 & 16 Geo. 5, c. 47. 13 Statutes 1106.	(Fire Brigade Pensions Act, 1925), s. 22 (1) (b) (ii) 263
15 & 16 Geo. 5, c. 67. 19 Statutes 315.	314, 316
15 & 16 Geo. 5, c. 68. 9 Statutes 219.	37, 193, 226, 227, 229, 426
15 & 16 Geo. 5, c. 70. 20 Statutes 596.	72
15 & 16 Geo. 5, c. 71. 13 Statutes 1115.	152
(Public Health Act, 1925)	400
s. 2	400
s. 3	46, 425
s. 4	425
(2)	57, 425
(3)	57
s. 6	46, 57
s. 18	60
(1)	62, 67
s. 20	380
s. 23	426
s. 24	425
s. 25	103, 319, 426
(3)	103
(4)	103, 319
s. 26	103, 315, 316, 426
s. 30	60, 62, 67, 387
s. 32	60, 62, 64, 67
s. 33	193, 426
s. 35	383, 388, 400
s. 39 (5)	381
s. 42	380
s. 46	381
s. 53	381
s. 56	4
s. 68	60, 62, 67, 142
(1)	140
(6)	141
(8)	140
(9)	140
s. 69	138
s. 70	4
(1)	4
s. 77	375, 376, 377, 378, 394, 407, 408
s. 81	383, 397
s. 82	383
Sched. II.	425
(Workmen's Compensation Act, 1925)	421
s. 41	87
s. 45	433
(Criminal Justice Act, 1925)	151, 413, 414, 415
(Rating and Valuation Act, 1925)	137, 159, 331
s. 1	247, 340
s. 2	324
(5)	122, 324
(6)	122
(7)	122
s. 3	157
s. 7	122, 324
s. 8	341
s. 9	157
(1)	341
(2) (a)	342
(b)	342
(c)	345
(d)	157, 343
(e)	343
(f)	345
(g)	345

	PAGE
15 & 16 Geo. 5, c. 90.	
14 Statutes 617.	
(Rating and Valuation Act, 1925)— <i>continued.</i>	
s. 9 (3).	341
(4).	156
(5).	341
s. 12	341
s. 13	341
s. 36 (2)	302, 346
s. 37 (10)	157
s. 42	157
s. 53	154
s. 58	346
s. 64 (3)	156, 342
(4)	370
s. 67	105
s. 68	46
(4)	341
Schad. II.	107, 131
(Port of London Act, 1925)	345
(Southern Railway Act, 1925)	307
(London County Council (General Powers) Act, 1925)	205
(Weights and Measures (Amendment) Act, 1926)	249
(Criminal Justice (Amendment) Act, 1926)	190, 194
(Adoption of Children Act, 1926)	414
15 & 16 Geo. 5, c. xxii.	
15 & 16 Geo. 5, c. 1.	
15 Statutes 1373.	
16 & 17 Geo. 5, c. 8.	
20 Statutes 418.	
16 & 17 Geo. 5, c. 13.	
11 Statutes 426.	
16 & 17 Geo. 5, c. 25.	
16 & 17 Geo. 5, c. 28.	
12 Statutes 193.	
16 & 17 Geo. 5, c. 29.	
9 Statutes 827.	
16 & 17 Geo. 5, c. 32.	
11 Statutes 783.	
16 & 17 Geo. 5, c. 34.	
12 Statutes 897.	
16 & 17 Geo. 5, c. 43.	
13 Statutes 1157.	
16 & 17 Geo. 5, c. 51.	
7 Statutes 792.	
16 & 17 Geo. 5, c. 53.	
19 Statutes 998.	
16 & 17 Geo. 5, c. 54.	
19 Statutes 316.	
16 & 17 Geo. 5, c. 59.	
3 Statutes 780.	
16 & 17 Geo. 5, c. 1.	
16 & 17 Geo. 5, c. xviii.	
11 Statutes 1378.	
17 & 18 Geo. 5, c. 13.	
1 Statutes 440.	
17 & 18 Geo. 5, c. 14.	
12 Statutes 956.	
17 & 18 Geo. 5, c. 37.	
19 Statutes 104.	
17 & 18 Geo. 5, c. xxii.	
11 Statutes 1390.	
17 & 18 Geo. 5, c. cxxii.	
18 & 19 Geo. 5, c. 17.	
10 Statutes 1007.	
18 & 19 Geo. 5, c. 20.	
18 & 19 Geo. 5, c. 31.	
8 Statutes 884.	
18 & 19 Geo. 5, c. 32.	
13 Statutes 1170.	
18 & 19 Geo. 5, c. 33.	
8 Statutes 651.	
(Road Transport Lighting Act, 1927)	152
(London County Council (General Powers) Act, 1927)	150
(Wallasey Corporation Act, 1927)	207
(Finance Act, 1928)	152
(Petroleum (Amendment) Act, 1928)	197
(Food and Drugs (Adulteration) Act, 1928)	152, 153, 350, 351
(Petroleum (Consolidation) Act, 1928)	46, 154, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 413
(Shops (Hours of Closing) Act, 1928) Schad. I.	323

		PAGE
18 & 19 Geo. 5, c. 40.	(Merchant Shipping (Line-throwing Appliance) Act, 1928).	299
18 Statutes 828.		
18 & 19 Geo. 5, c. 44.	(Rating and Valuation (Apportionment) Act, 1928),	109
14 Statutes 723.	s. 7 (2)	109
18 & 19 Geo. 5, c. xlvi.	(Port of London Act, 1928)	307
18 & 19 Geo. 5, c. lxxxiv.	(Oxford Extension Act, 1928)	104, 105
19 Geo. 5, c. 17.	(Local Government Act, 1929)	74, 104, 174, 175,
10 Statutes 883.	176, 247, 282, 283, 284, 333, 344, 345, 362, 431	
	s. 3	52
	s. 20	52
	s. 23	52
	s. 29 (1)	225
	s. 30 (2)	386, 398, 400
	(3)	220, 386
	s. 31	55
	s. 32	226
	(3)	55
	s. 33	226
	s. 37	55
	s. 48	109
	s. 50	52
	s. 57	52
	s. 60	52
	s. 61	46, 52
	s. 62	52
	s. 63 (6)	52
	s. 113	4, 52
	(2)	46
	s. 115	109, 138
	(3)	135
	(6)	138
	s. 119	53
	s. 125 (1)	53
	s. 130	46, 53
	s. 138	53
	Sched. I.	225, 386, 400
	Sched. X.	53, 165, 226
19 & 20 Geo. 5, c. 23.	(Companies Act, 1929)	373
2 Statutes 775.		
19 & 20 Geo. 5, c. 36.	(Age of Marriage Act, 1929), s. 1	354
9 Statutes 372.		
20 Geo. 5, c. 17.	(Poor Law Act, 1930)	74, 165, 174
12 Statutes 968.	s. 1	75
	s. 4	75
	s. 5	75, 76
	s. 9	75
	s. 17	83, 84, 86
	(2)	84
	(3)	84
	s. 18	79
	s. 20 (3)	286
	s. 31	290
	s. 45	75
	(1)	74
	s. 46	77
	s. 47	86
	s. 48	89
	(1)	79
	(2)	79
	s. 49	83
	s. 50	83
	s. 60	292
	s. 61 (2)	292
	s. 62	292
	s. 67	553
	s. 70	78
	s. 75	79
	s. 78	290

TABLE OF STATUTES

xxxiii

20 Geo. 5, c. 17.
12 Statutes 968.(Poor Law Act, 1930)—*continued.*

PAGE

s. 79	77, 84
s. 81	85
s. 101	289
s. 120	291
s. 129	84
s. 130	84
s. 136	75
s. 137 (3)	201
s. 139	202
s. 145	202
s. 146	200
s. 147	200
s. 148	201
s. 149	200
s. 150	287
s. 151 (2)	280
s. 152	280, 291
s. 153	288
s. 154	201
s. 155	286
s. 159	289
s. 160 (4)	201
s. 165	287
20 & 21 Geo. 5, c. 23. 23 Statutes 154.	(Mental Treatment Act, 1930)

	175
	s. 1 (1).
	167, 182, 183
	(2)–(5)
	167
	s. 2 (1).
	167, 168
	(3)–(5)
	168
	s. 3
	108
	s. 4
	184
	s. 5
	168, 169, 171, 184
	(1).
	184
	(2).
	169
	(3).
	169, 172
	(5).
	170
	(6).
	170, 172
	(9).
	170, 173, 189
	(10).
	170, 173
	(11).
	170
	(12).
	171, 173, 183
	(13).
	170
	(14).
	171, 173, 183
	(16).
	171
	s. 6 (1).
	168
	(2).
	166
	(3) (a)
	166, 182
	(4).
	165, 167, 169, 173, 183, 184, 187
	s. 7
	186
	s. 8
	188
	s. 13
	181, 189
	s. 17
	176
	s. 18
	166
	s. 19
	176, 181
	s. 20
	190
	s. 21
	187
	s. 22
	165
	Sched. I.
	169
20 & 21 Geo. 5, c. 24. 23 Statutes 472.	(Railways (Valuation for Rating) Act, 1930)
20 & 21 Geo. 5, c. 39. 23 Statutes 396.	Sched. II.
20 & 21 Geo. 5, c. 43. 23 Statutes 607.	(Housing Act, 1930)
	100
	(Road Traffic Act, 1930)
	15, 242
	s. 14
	36
	s. 35 (4)
	27
	s. 46
	55
	s. 47
	60, 67
	s. 62
	55

20 & 21 Geo. 5, c. 43. 23 Statutes 607.	PAGE
(Road Traffic Act, 1930)—continued.	
s. 72	17
(4)	26, 27
(6)	26
(7)	26
(10)	25
s. 74	25
s. 75 (1)	27
(2)	27
s. 76	27
(2)	27
s. 90	28
(3) (a)	141
(6)	141
(7)	141
(9)	141
s. 91	16
s. 93	25
(2)	25
(3)	25
s. 101	16
s. 102	17
(1)	17
(7)	17
s. 103	23
s. 104 (1)	26
s. 105	17, 18
(1)	17
(2)	17, 18
(3)	17
(4)	18
(6)	18
s. 106	27
s. 107	24
(1) (b)	24
(2)	24
(3)	24
s. 108 (1)	16
(2)	17, 26
s. 113	25
s. 121	16
s. 122	17
(Land Drainage Act, 1930)	159, 270, 275, 346,
	347, 432, 436
(London Building Act, 1930)	155, 203, 224, 427
(Metropolitan Police (Staff Superannuation and Police Fund) Act, 1931)	264
(Ancient Monuments Act, 1931)	435
(Agricultural Land (Utilisation) Act, 1931)	139, 436
(Middlesex County Council Act, 1931)	59
(Doncaster Corporation Act, 1931)	276
(London County Council (General Powers) Act, 1931)	224
(London Squares Preservation Act, 1931)	43
(Finance Act, 1932), s. 18	27
(Public Health (Cleansing of Shell-fish) Act, 1932)	225,
(Rights of Way Act, 1932), s. 3	295, 431
(Town and Country Planning Act, 1932)	70
s. 2	33, 36, 423
s. 3	213
s. 4	213
s. 6	56
	213

TABLE OF STATUTES

XXXV

		PAGE
22 & 23 Geo. 5, c. 48. 25 Statutes 470.	(Town and Country Planning Act, 1932)—continued.	
	s. 6 (4).	56
	s. 10	56, 213
	(3)	216
	(5)	215
	s. 11	36, 30, 213
	(2)	63
	s. 13	194
	s. 14	60, 63, 67
	s. 15	60, 63, 67
	s. 17	60, 64, 67
	s. 18	194
	s. 19	227
	s. 20	194
	s. 25	60, 67, 431
	s. 34	38, 39
	s. 35	47, 56
	s. 36	56
	s. 40 (2)	64
	(3)	64
	s. 46	227, 229
	s. 52	46, 49, 56
	s. 53	193
	Sched. II.	36, 39
	Sched. III.	67, 431
	Pt. I.	40
	Pt. II.	31, 37, 420
22 & 23 Geo. 5, c. 51. 25 Statutes 921.	(Sunday Entertainments Act, 1932)	411, 412
22 & 23 Geo. 5, c. xxxvii. (Thames Conservancy Act, 1932)	230, 232, 233, 277	
22 & 23 Geo. 5, c. xxxviii. (Port of London (Various Powers) Act, 1932)	307	
25 Statutes 786.	s. 20	277
	s. 22	308
23 Geo. 5, c. 12. 26 Statutes 168.	(Children and Young Persons Act, 1933)	414
	s. 1	353, 358
	(6) (b)	358
	s. 2	358
	(1)	354
	(2)	354
	s. 3	358
	s. 4	356, 358
	s. 5	355
	s. 7	355
	(2)—(4)	355
	s. 8	147
	s. 10	356
	s. 11	356, 358
	s. 12	357
	(1)	356
	(2)	356
	(3)—(6)	357
	s. 13 (1)	357
	s. 14	357
	s. 15	358
	s. 38	358
	s. 61	355, 356
	(2)	355
	s. 62	356
	(2)	353
	s. 96	353
	s. 98 (1)	352
	s. 99	353
	s. 107	356
	Sched. I.	357
23 Geo. 5, c. 14. 26 Statutes 744.	(London Passenger Transport Act, 1933)	141, 209, 233, 372
23 & 24 Geo. 5, c. 25. 26 Statutes 562.	(Pharmacy and Poisons Act, 1933)	234, 235, 236, 237, 412

	PAGE
23 & 24 Geo. 5, c. 32. 26 Statutes 266.	97, 100
23 & 24 Geo. 5, c. 51. 26 Statutes 295.	119, 165, 294, 295, 303, 316, 339
(Rent and Mortgage Interest Restrictions (Amendment) Act, 1933)	107
(Local Government Act, 1933)	105, 60, 63, 60, 63, 60, 64, 114, 64, 132, 137, 131, 132, 132, 135, 3, 137, 135, 137
s. 1 (2) (1)	107
s. 22	105
s. 35	60
s. 37	60
s. 38	60
s. 41	60
s. 42 (1)	46
s. 43	60, 113, 131, 114
(1)	131
(3)	114
s. 44	60
s. 45	60, 64, 114
s. 46	64
s. 47	132, 137
(1)	131, 132
(2)	132, 135
(3)	3, 137
(4)	135, 137
s. 48 (1)—(3)	114
s. 49 (2)	117
s. 50	114, 124
(2)	126
s. 51	60, 63
s. 52	61, 63, 124, 131, 124
(5)	133
s. 53 (2)	134
s. 54 (2)	127
s. 55	61, 62
s. 56	125
s. 57	8, 125
s. 59	125
s. 60	126
s. 61 (4)	126
s. 62	126
s. 63 (1)	127
s. 67 (6)	127
s. 68	127
s. 76	8, 125, 152
s. 78 (a)	133
(b)	132
ss. 79—82	153
s. 85 (1)—(3)	117
s. 87	121
(3)	46, 53
s. 90	134
s. 91	22, 118, 330, 332
s. 94	8
s. 95	8, 126
s. 96 (2)	118
s. 99 (2)	11
s. 108	98, 302
s. 109	302
s. 110	302
s. 111	302
s. 112	53, 430
s. 114 (3)	121
(4)	120
s. 119 (3)	120
(4)	120
s. 120	111
s. 121	10
s. 122	10
s. 123	10, 162
s. 125	1, 2, 5

TABLE OF STATUTES

xxxvii

23 & 24 Geo. 5, c. 51.
26 Statutes 295.

	PAGE
(Local Government Act, 1933)—continued.	
s. 125 (2)	2
s. 126 (1)	3
(2)	4
s. 127	2, 3, 133, 138
s. 128	3, 133
(1)	3, 114, 115
(2)	3
(3)	3
ss. 129—130	63
s. 140	63, 430
(1) (a)—(d)	53
(4)	430
s. 141	60, 63, 66
s. 142	46, 47, 63
s. 143	53, 63
(2)	50
s. 144	63, 108
s. 145	63
s. 146	53, 63, 430
s. 147	63
s. 148	53, 63
s. 149	53, 63
(2)	373
s. 150	63, 302
ss. 151—155	63
s. 158	2
s. 159	36
s. 160	2, 430
s. 161	50, 61, 65, 332, 430
(3) (a)	50
s. 162	61, 332
(2)	420
s. 163	2
s. 167	2, 138
s. 168	2, 60, 65
(7)	50, 54
s. 169	130
s. 170 (1)	130
s. 172	35
s. 174	37, 61, 332, 430
(3)	31
s. 175	61, 332
s. 179	61
(a)	332
(c)	332
s. 181	410
s. 182	342
s. 183	342
s. 185	23, 323, 410
s. 186	323
s. 187	323
s. 188	23, 323, 410
s. 190	23, 54, 323
(3)	46
s. 191	410
s. 193	54, 122, 159, 323, 324
(1)	121
(2)	121
(3)	121, 130
(4)	122
(6)	138, 346
(7)	346
(8)	116
(9)	110
s. 195	2, 3, 24, 122, 324, 410
s. 196	122, 323, 324
(1)	324

		PAGE
23 & 24 Geo. 5, c. 51.	(Local Government Act, 1933)— <i>continued.</i>	
26 Statutes 295.		
s. 196 (2)	.	324
s. 197	.	324
(1)	.	123
s. 198	.	24, 324
s. 199	.	46, 152, 324
(3)	.	54
s. 200	.	324
s. 201	.	54, 324
s. 202	.	122, 324
s. 203	.	324
s. 204	.	47, 324
s. 205	.	122, 324
s. 206	.	122, 324
s. 207	.	122, 152, 324
s. 208—211	.	324
s. 212	.	123, 324
s. 213	.	324
s. 214	.	324
s. 215	.	123, 324
s. 216	.	123, 324
s. 217	.	324
s. 218	.	324
s. 219	.	112
s. 222	.	112, 152
s. 223	.	110
s. 228	.	341
s. 234	.	54
s. 235	.	153
s. 246	.	153
s. 250	.	36
(8)	.	129
s. 251	.	151
s. 268	.	139
s. 269 (1)	.	109
(3)	.	54
s. 270	.	46, 430
s. 271	.	54
s. 272	.	54
s. 273	.	66, 135, 136
(1)	.	3
(2)	.	3
s. 274	.	330, 332
s. 276	.	120
s. 277	.	120, 352
s. 281	.	128
(3)	.	129
s. 282	.	129
s. 283	.	129
(3)	.	112
(4)	.	112
(8)	.	112, 129
s. 285	.	429, 430
s. 286 (2)	.	132
s. 287 (1)	.	121
s. 290	.	153
s. 292	.	54
s. 293	.	54
(1) (i)	.	431
s. 294	.	11
s. 296	.	113
s. 302	.	105
s. 305	.	1, 121, 125, 132, 136, 138
s. 307	.	1
Sched. III. Pt. IV.	.	115, 116, 117, 127
Pt. V.	.	116, 117, 127
Pt. VI.	.	115, 131, 132, 133, 134
Sched. IV.	.	302

TABLE OF STATUTES

XXXIX

	PAGE
23 & 24 Geo. 5, c. 51. 26 <i>Statutes</i> 295.	
(Local Government Act, 1933)— <i>continued.</i>	
Sched. VI.	40, 50
Sched. VIII.	24
Sched. IX.	153
Sched. XI.	1, 24
23 & 24 Geo. 5, c. 53. 26 <i>Statutes</i> 870.	
(Road and Rail Traffic Act, 1933)—	
s. 27	15
s. 29	55
s. 32	25
23 & 24 Geo. 5, c. xxi.	
23 & 24 Geo. 5, c. xxviii. 26 <i>Statutes</i> 695.	
(Oxford Corporation Act, 1933)	105
(London County Council (General Powers) Act, 1933)	41, 105, 347
(London Overground Wires, etc., Act, 1933)	103
23 & 24 Geo. 5, c. xliv.	
24 & 25 Geo. 5, c. 21. 27 <i>Statutes</i> 25.	
(Essex County Council Act, 1933)	228
(Protection of Animals Act, 1934)	162
24 & 25 Geo. 5, c. 29. 27 <i>Statutes</i> 822.	
(Unemployment Act, 1934), Sched. VIII.	77
24 & 25 Geo. 5, c. 36. 27 <i>Statutes</i> 442.	
(Petroleum (Production) Act, 1934)	106
s. 1 (1).	197
s. 3 (1) (b)	197
(2) (a)	197
s. 4	197
24 & 25 Geo. 5, c. 50. 27 <i>Statutes</i> 534.	
(Road Traffic Act, 1934)	242
s. 1	46, 55
(4).	60
(a)	66
s. 29 (2)	141
24 & 25 Geo. 5, c. 53. 27 <i>Statutes</i> 107.	
(County Courts Act, 1934)—	
s. 34	5
s. 52	306, 307
24 & 25 Geo. 5, c. 59. 27 <i>Statutes</i> 457.	
(Poor Law Act, 1934), s. 1	78, 80
24 & 25 Geo. 5, c. lxxv.	
25 Geo. 5, c. 8. 28 <i>Statutes</i> 529.	
(Lowestoft Corporation Act, 1934)	205, 207
(Unemployment Insurance Act, 1935)—	
s. 54 (1)	86
(2)	86
(Law Reform (Married Women and Tortfeasors) Act, 1935).	287
(Housing Act, 1935)	49, 92
s. 1	88, 89
s. 12	90
25 & 26 Geo. 5, c. 47. 28 <i>Statutes</i> 79, 275.	
(Restriction of Ribbon Development Act, 1935)	61
s. 1	64, 213, 223
(4).	46, 55
s. 2	64, 213, 223
s. 7 (4)	56, 64
s. 8	213
(2) (a)	223
(b)	223, 224
s. 11	154
s. 12	46, 58
s. 13	60
(1)	65
(3) (a)	40
s. 14	65
s. 16	60, 62, 67, 141
(2)	141
(4)	141
s. 17	154, 193
s. 18 (2)	55
s. 19 (4)	55
s. 20	142
s. 23 (2)	315
s. 24 (1)	193
25 & 26 Geo. 5, c. xxxiii. 28 <i>Statutes</i> 148.	
(London County Council (General Powers) Act, 1935)	42, 43, 232, 250

	PAGE
25 & 26 Geo. 5, c. cxvi. (Port of London Act, 1935)	307
26 Geo. 5 & 1 Edw. 8, c. 27. (Petroleum (Transfer of Licences) Act, 1936)	196
29 Statutes 307. s. 1 (3).	198
26 Geo. 5 & 1 Edw. 8, c. 31. (Old Age Pensions Act, 1936)	7, 8, 9, 12
29 Statutes 1051.	
26 Geo. 5 & 1 Edw. 8, c. 32. (National Health Insurance Act, 1936)	4, 72, 73, 80
29 Statutes 1064.	
26 Geo. 5 & 1 Edw. 8, c. 33. (Widows', Orphans' and Old Age Contributory Pensions Act, 1936)	7, 72
26 Geo. 5 & 1 Edw. 8, c. 36. (Pilotage Authorities (Limitation of Liability) Act, 1936)	209
29 Statutes 792. s. 1	211
26 Geo. 5 & 1 Edw. 8, c. 43. (Titho Act, 1936)	381
29 Statutes 023.	
26 Geo. 5 & 1 Edw. 8, c. 48. (Health Resorts and Watering Places Act, 1936)	159
29 Statutes 308.	
26 Geo. 5 & 1 Edw. 8, c. 49. (Public Health Act, 1936)	88, 268, 273, 300, 303, 425
29 Statutes 309. s. 1	378, 379
(2).	212
s. 2	58, 431
(2).	293
(3).	294
(4).	294
s. 3 (1).	295
(2).	295
s. 5	301
s. 6	51, 58, 431
(5).	295
s. 8	58
s. 9	58, 431
(1).	294
(2).	294
s. 12	58
s. 15 (4)	121
s. 19	154
s. 24 (5)	374
s. 25	215, 380
s. 27	196, 201
s. 30	271, 279
s. 32	215
s. 36	154
s. 37	216
s. 39	380
s. 40	380
s. 43	216
ss. 44—47	380
s. 50	380
s. 53 (1)	216
s. 54	216
s. 55	216
s. 56	380
s. 58	154, 380
s. 59	154, 216, 380
s. 60	380
s. 61	212, 217, 370
s. 64	215
(2)—(4)	216
(5)	217
s. 65	221
(3)	381
s. 66 (1)—(3)	218
s. 67	218
s. 68	212
s. 79	381
s. 83	381
s. 88	381
s. 92 (1) (a)	100

TABLE OF STATUTES

xli

26 Geo. 5 & 1 Edw. S, c. 49. (Public Health Act, 1936)—continued.
20 Statutes 300.

PAGE

s. 92 (1) (e)	.	.	.	.	.	100
s. 96	.	.	.	.	.	381
s. 103	.	.	.	.	.	154
s. 107	.	.	.	.	.	46, 68
s. 108	.	.	.	.	.	58
s. 109	.	.	.	.	.	432
s. 113	.	.	.	.	.	58
s. 116 (4)	.	.	.	.	.	121
s. 120	.	.	.	.	269, 280	280
s. 121	.	.	.	.	.	154
s. 124	.	.	.	.	.	278
s. 126	.	.	.	.	.	58
s. 137	.	.	.	.	154, 216	216
s. 138	.	.	.	.	.	381
s. 143	.	.	.	153, 295, 296, 361	361	361
(5)	.	.	.	.	.	361
s. 147	.	.	.	.	.	68
s. 148	.	.	.	.	.	359
s. 160	.	.	.	359, 364, 365	365	365
s. 151	.	.	.	.	359, 364	364
s. 153	.	.	.	.	68, 153	153
s. 157	.	.	.	.	.	153
s. 159 (2) (a)	.	.	.	.	359	359
s. 162	.	.	.	.	.	62
s. 170	.	.	.	.	.	62
ss. 174—176	.	.	.	.	.	58
s. 187	.	.	.	.	68, 154	154
s. 188	.	.	.	.	.	68
s. 194	.	.	.	.	.	58
s. 198	.	.	.	120, 324	324	324
s. 200	.	.	.	.	.	59
s. 217	.	.	.	.	153	153
ss. 221 <i>et seq.</i>	.	.	.	.	130	130
s. 244	.	.	.	.	.	68
s. 258	.	.	.	.	299	299
s. 259	.	.	.	272, 279	279	279
(1)	.	.	.	.	272	272
(2)	.	.	.	.	272	272
s. 260	.	.	.	.	278	278
(2)	.	.	.	.	279	279
s. 262	.	.	.	.	272	272
(2)—(4)	.	.	.	.	272	272
s. 264	.	.	.	.	381	381
s. 268 (2)	.	.	.	.	100	100
(a)	.	.	.	.	100	100
(5)	.	.	.	.	100	100
s. 275	.	.	.	.	381	381
s. 279	.	.	.	.	154	154
s. 283 (2)	.	.	.	.	390	390
s. 287	.	.	.	.	62	62
s. 288	.	.	.	.	62	62
s. 290	.	.	.	.	375	375
(6)	.	.	.	.	380	380
s. 291	.	.	.	375, 376, 378, 379, 380	375, 376, 378, 379, 380	375, 376, 378, 379, 380
(1)	.	.	.	.	378	378
(2)	.	.	.	.	378	378
(3)	.	.	.	.	379	379
s. 292	.	.	.	.	379, 380	379, 380
s. 293	.	.	.	379, 380, 431	380, 431	380, 431
s. 294	.	.	.	.	379, 380	379, 380
s. 295	.	.	.	.	380	380
s. 296	.	.	.	.	151, 272	151, 272
s. 297	.	.	.	.	151, 272	151, 272
s. 298	.	.	.	.	151	151
s. 299	.	.	.	.	151	151
ss. 300—302	.	.	.	.	272	272
s. 306	.	.	.	.	430	430

	PAGE
26 Geo. 5 & 1 Edw. 8, c. 49. (Public Health Act, 1936)—continued.	
<i>29 Statutes 309.</i>	
s. 309	346
s. 310	302
s. 313	59
s. 314	295, 431
s. 315	59
s. 316	429
s. 317	431
s. 322	59
s. 325	59
s. 326	302
s. 329	379, 380
s. 331	272
s. 332	272
s. 336	59
s. 341	370
s. 343	100
(1)	
s. 346	359, 378
(1) (c).	376
Sched. I.	68, 351
Sched. III.	302
<i>26 Geo. 5 & 1 Edw. 8, c. 50. (Public Health (London) Act, 1936)</i>	6, 98, 154, 155,
<i>30 Statutes 437.</i>	196, 203, 280, 281, 300, 304, 326, 371
26 Geo. 5 & 1 Edw. 8, c. 51. (Housing Act, 1936).	431
<i>29 Statutes 565.</i>	
s. 1 (1).	88
s. 6 (1) (a)	
(2).	99
s. 7 (5).	51
s. 10	153, 381
s. 11	60, 65
s. 12	65
s. 14	153
s. 15	60
s. 16	60
s. 20	65, 381
s. 21	65, 381
(1) (c)	380
s. 26	60, 65
s. 29	60, 65
s. 36	65
s. 39 (1)	51
s. 43	51
s. 46	60, 61, 66
s. 54	66
s. 55	66
s. 57	89
(2).	89
s. 58	96
(1)	90, 91
(2)	91
s. 59	96
(1)	92
(2)—(4)	93
(5)	94
s. 60	46, 51
(1)	94
(2)	94
s. 61	94
(1)	94
(2)	94
(3)—(6)	94
s. 62	95
(1)	95
(2)	96
(3)	91
(4)	96
s. 63	96

	PAGE
26 Geo. 5 & 1 Edw. 8, c. 51. (Housing Act, 1936)—continued.	
29 Statutes 565.	
s. 64	97
s. 65 (1)	97
(2)	97
s. 66	151
(1)	97
(2)	97
(3)	98
s. 67	98
s. 68	90, 92, 93
s. 71	89
s. 73	36
s. 74	36, 65
s. 76	423
s. 79	36
s. 80	36, 51
s. 103 (5)	51
s. 109	47, 51
s. 122	431
(1)	51
(3)	51
s. 135	51
s. 136	93
s. 143	31, 37, 423, 431
s. 151	51
s. 155	153
s. 156 (1) (b)	100
s. 157	98
s. 159	153
s. 160	51, 60, 64
(1)	120
(2)	51
(3)	51
(4)	51
Sched. I.	153
Sched. II.	61, 65, 420
Sched. III.	65
Sched. IV.	65
Sched. V.	91
Sched. VII.	158
26 Geo. 5 & 1 Edw. 8, c. 53. (Shops (Sunday Trading Restriction) Act, 1936)	68
29 Statutes 152.	
1 Edw. 8 & 1 Geo. 6, c. 6. (Public Order Act, 1936)	416, 417, 418
29 Statutes 57.	
1 Edw. 8 & 1 Geo. 6, c. 22. (Local Government (Financial Provisions) Act, 1937)	168, 345
30 Statutes 377.	
1 Edw. 8 & 1 Geo. 6, c. 39. (Widows', Orphans' and Old Age Contributory Pensions (Voluntary Contributors) Act, 1937)	73
30 Statutes 997.	
1 Edw. 8 & 1 Geo. 6, c. 40. (Public Health (Drainage of Trade Premises) Act, 1937)	266, 268
30 Statutes 995.	
1 Edw. 8 & 1 Geo. 6, c. 50. (Livestock Industry Act, 1937), s. 15	436
30 Statutes 3.	
s. 58	436
Sched. III.	436
1 Edw. 8 & 1 Geo. 6, c. 54. (Finance Act, 1937), s. 31	38
30 Statutes 195.	
1 Edw. 8 & 1 Geo. 6, c. 67. (Factories Act, 1937)	100
30 Statutes 201.	
1 Edw. 8 & 1 Geo. 6, c. lxxvii. (National Trust Act, 1937)	38, 39
1 Edw. 8 & 1 Geo. 6, c. lxxv. (Newcastle-under-Lyme Corporation Act, 1937), s. 90	366
1 & 2 Geo. 6, c. 6. (Air-Raid Precautions Act, 1937)	328
30 Statutes 1025.	
s. 1	328

TABLE OF STATUTES

[Vol. X.]

	PAGE
(Air-Raid Precautions Act, 1937)— <i>continued.</i>	
s. 1 (2) (a)	331
(b)	330
(4).	330, 331
(5).	331
(6).	331
(7).	332
s. 2	338, 339
s. 3 (1).	330, 332
(2).	332
(3).	330, 332
s. 4	332
(1).	330
(2).	330
s. 5	330, 332
s. 6	332
s. 7 (1).	332
(2).	333
(3).	339
s. 8	330
(1).	339
(2).	333
s. 9	330, 334
s. 10	331, 332
s. 11 (1).	330, 334
(2).	331
(3).	331
s. 12	331
Sched.	330, 333, 334

TABLE OF CASES

A.

	PAGE
Acton Local Board v. Lewsey (1886), 11 App. Cas. 93 ; 55 L. J. (Q. B.) 404 ; 54 L. T. 657 ; 50 J. P. 708 ; 34 W. R. 745	393
Aston U.D.C. v. Watts (1903), 67 J. P. 400 ; 1 L. G. R. 594	393, 399
Airdrie Magistrates v. Lanark County Council, [1910] A. C. 286 ; 79 L. J. (P. C.) 82 ; 102 L. T. 437	273
Aldridge, <i>Ex parte</i> . See R. v. Minister of Health, <i>Ex parte</i> Aldridge.	
Allen and Driscoll's Contract, <i>R.</i> , [1904] 2 Ch. 226 ; 73 L. J. (Ch.) 614 ; 91 L. T. 676 ; 68 J. P. 469 ; 52 W. R. 680 ; 20 T. L. R. 605 ; 48 Sol. Jo. 587 ; 2 L. G. R. 959, C. A.	377, 397
Altringham U.D.C. v. O'Brien (1927), 91 J. P. 149 ; 25 L. G. R. 369	393, 397
Amble U.D.C., <i>Ex parte</i> . See R. v. Northumberland JJ., <i>Ex parte</i> Amble U.D.C.	
Angell v. Paddington, Vestry (1868), L. R. 3 Q. B. 714 ; 9 B. & S. 496 ; 37 L. J. (M. C.) 171 ; 32 J. P. 742 ; 16 W. R. 1167	392
Anon. (1671), T. Jo. 25	151
Appledore Tithe Commutation, <i>R.</i> (1845), 8 Q. B. 139	422
Arter v. Hammersmith, Vestry, [1897] 1 Q. B. 646 ; 66 L. J. (Q. B.) 460 ; 76 L. T. 300 ; 61 J. P. 279 ; 45 W. R. 398 ; 41 Sol. Jo. 351	386
Associated Newspapers, Ltd. v. London City Corpn., [1913] 2 K. B. 281 ; 82 L. J. (K. B.) 928 ; 108 L. T. 789 ; 77 J. P. 273 ; 11 L. G. R. 554 ; on appeal, [1914] 2 K. B. 603 ; 83 L. J. (K. B.) 979 ; 110 L. T. 796 ; 78 J. P. 225 ; 30 T. L. R. 337 ; 58 Sol. Jo. 318 ; 12 L. G. R. 372, C. A. ; <i>sub nom.</i> London City Corpn. v. Associated Newspapers, Ltd., [1915] A. C. 674 ; 84 L. J. (K. B.) 1053 ; 113 L. T. 1 ; 79 J. P. 273 ; 31 T. L. R. 266 ; 13 L. G. R. 673	374
A.-G. v. Antrobus, [1905] 2 Ch. 188 ; 74 L. J. (Ch.) 599 ; 92 L. T. 790 ; 69 J. P. 141 ; 21 T. L. R. 471 ; 49 Sol. Jo. 458 ; 3 L. G. R. 1071	69
— v. Barnsley Corpn., [1874] W. N. 37	267
— v. Birmingham, Tame and Rea District Drainage Board, [1912] A. C. 788 ; 82 L. J. (Ch.) 45 ; 107 L. T. 353 ; 76 J. P. 481 ; 11 L. G. R. 194.	271
— v. Cockermouth Local Board (1874), L. R. 18 Eq. 172 ; 30 L. T. 590 ; 38 J. P. 660 ; 22 W. R. 619 ; <i>sub nom.</i> Workington Local Board v. Cockermouth Local Board, 44 L. J. (Ch.) 118	267
— v. Edison Telephone Co. of London (1880), 6 Q. B. D. 244 ; 50 L. J. (Q. B.) 145 ; 43 L. T. 697 ; 29 W. R. 428	101, 314
— v. Horner (1884), 14 Q. B. D. 245 ; 54 L. J. (Q. B.) 227 ; 49 J. P. 326 ; 33 W. R. 93, C. A. ; on appeal (1885), 11 App. Cas. 68 ; 55 L. J. (Q. B.) 193 ; 54 L. T. 281 ; 50 J. P. 564 ; 34 W. R. 641 ; 2 T. L. R. 202	373
— v. Leeds Corpn. (1870), 5 Ch. App. 583 ; 39 L. J. (Ch.) 711 ; 34 J. P. 708 ; 19 W. R. 18	268
— v. Lewes Corpn., [1911] 2 Ch. 495 ; 81 L. J. (Ch.) 40 ; 105 L. T. 697 ; 76 J. P. 1 ; 27 T. L. R. 581 ; 55 Sol. Jo. 703 ; 10 L. G. R. 26	273
— v. Manchester Corpn., [1893] 2 Ch. 87 ; 62 L. J. (Ch.) 459 ; 68 L. T. 608 ; 41 W. R. 459 ; 9 T. L. R. 315 ; 37 Sol. Jo. 325 ; 3 R. 427	268
— v. Merthyr Tydfil Union, [1900] 1 Ch. 516 ; 69 L. J. (Ch.) 299 ; 82 L. T. 662 ; 6 J. P. 276 ; 48 W. R. 403 ; 16 T. L. R. 261 ; 44 Sol. Jo. 294, C. A.	78, 288
— v. Ringwood R.D.C. (1928), 92 J. P. 65 ; 26 L. G. R. 174	271
— v. Sunderland Corpn., [1930] 1 Ch. 168 ; 99 L. J. (Ch.) 44 ; 142 L. T. 61 ; 64 J. P. 57 ; 46 T. L. R. 10, C. A.	140
— v. Teddington Urban Council, [1898] 1 Ch. 66 ; 67 L. J. (Ch.) 23 ; 77 L. T. 426 ; 61 J. P. 825 ; 46 W. R. 88 ; 14 T. L. R. 32 ; 42 Sol. Jo. 46	35

A.-G. v. Tynemouth Union, [1930] 1 Ch. 616; 99 L. J. (Ch.) 307; 143 L. T. 70; 94 J. P. 191; 46 T. L. R. 272; 74 Sol. Jo. 169; 28 L. G. R. 179	83
A.-G. and Croydon R.D.C. v. Moorsom-Roberts (1907), 72 J. P. 123; 6 L. G. R. 470	69
Austerberry v. Oldham Corp. (1885), 29 Ch. D. 750; 55 L. J. (Ch.) 633; 53 L. T. 543; 49 J. P. 532; 33 W. R. 807; 1 T. L. R. 473, C. A.	312

B.

Bacup Corpn. v. Smith (1890), 44 Ch. D. 395; 59 L. J. (Ch.) 518; 63 L. T. 195; 38 W. R. 697	385
Baily & Co. v. Clark, Son and Morland, [1902] 1 Ch. 649; 71 L. J. (Ch.) 396; 84 L. T. 309; 50 W. R. 511; 18 T. L. R. 364; 46 Sol. Jo. 316, C. A.	266
Bainbridge v. Postmaster-General, [1906] 1 K. B. 178; 75 L. J. (K. B.) 366; 94 L. T. 120; 54 W. R. 221; 22 T. L. R. 70, C. A.	315
Ballard v. Tomlinson (1885), 29 Ch. D. 115; 54 L. J. (Ch.) 454; 52 L. T. 942; 49 J. P. 692; 33 W. R. 533; 1 T. L. R. 270, C. A.	266
Bannister v. Sullivan (1904), 91 L. T. 380; 68 J. P. 390; 2 L. G. R. 874; 20 Cox, C. C. 685	287
Barney, Re, Harrison v. Barney, [1894] 3 Ch. 562; 63 L. J. (Ch.) 676; 71 L. T. 180; 43 W. R. 105; 8 R. 459	385
Barry and Cadotxton Local Board v. Parry, [1895] 2 Q. B. 110; 64 L. J. (Q. B.) 512; 72 L. T. 692; 59 J. P. 421; 43 W. R. 504; 39 Sol. Jo. 507; 15 R. 430	388
Bayley v. Wilkinson (1864), 16 C. B. (n. s.) 161; 33 L. J. (M. C.) 161; 10 L. T. 543; 10 Jur. (n. s.) 726; 12 W. R. 797	389
Baynes v. Brewster (1841), 2 Q. B. 375; 1 Gal. & Dav. 669; 11 L. J. (M. C.) 5; 5 J. P. 799; 6 Jur. 392	240
Beatty v. Gilbanks (1882), 9 Q. B. D. 308; 51 L. J. (M. C.) 117; 47 L. T. 194; 46 J. P. 789; 15 Cox, C. C. 138	416
Bell & Sons v. Great Crosby U.D.C. (1912), 108 L. T. 455; 77 J. P. 37; 10 L. G. R. 1007	406
Benjamin v. Stott (1874), L. R. 9 C. P. 400; 43 L. J. (C. P.) 162; 30 L. T. 362; 22 W. R. 631	267
Bettesworth and Richer, Re (1885), 37 Ch. D. 335; 57 L. J. (Ch.) 749; 58 L. T. 794; 52 J. P. 740; 36 W. R. 544; 4 T. L. R. 248	397
Bidder v. Bridges (1885), 54 L. T. 629; 34 W. R. 514; 2 T. L. R. 6	69
Biggs v. Burridge (1924), 89 J. P. 75; 22 L. G. R. 555	288
Birmingham Corpn. v. Baker (1881), 17 Ch. D. 782; 46 J. P. 52	396, 408
Blackburne Corpn. v. Sanderson, [1902] 1 K. B. 794; 71 L. J. (K. B.) 590; 86 L. T. 304; 66 J. P. 452; 18 T. L. R. 436, C. A.	389
Blackburne v. Somers (1879), 5 L. R. Ir. 1	267
Blackpool Pier Co. and South Blackpool Jetty Co. v. Fylde Union Assessment Committee and Layton with Warbreck Township Overseers (1877), 46 L. J. (M. C.) 189; 36 L. T. 251; 41 J. P. 344	205
Blair and Sunner Deakin (1887), 57 L. T. 522; 52 J. P. 327; 3 T. L. R. 757	268, 273
Bloor v. Beckenham U.D.C., [1906] 2 K. B. 671; 77 L. J. (K. B.) 864; 99 L. T. 299; 72 J. P. 325; 6 L. G. R. 876	389
Bonella v. Twickenham Local Board of Health, Holmes v. Twickenham Local Board of Health (1887), 20 Q. B. D. 63; 57 L. J. (M. C.) 1; 58 L. T. 299; 52 J. P. 356; 35 W. R. 50; 4 T. L. R. 51, C. A.	389
Bowditch v. Wakefield Local Board (1871), L. R. 6 Q. B. 567; 40 L. J. (M. C.) 214; 25 L. T. 88; 36 J. P. 197	392
Bowman, Re, South Shields (Tharne Street) Clearance Order, 1931, [1932] 2 K. B. 621; 101 L. J. (K. B.) 798; 147 L. T. 150; 96 J. P. 207; 48 T. L. R. 351; 76 Sol. Jo. 273; 30 L. G. R. 245	420
Bridgewater Corpn. v. Stone (1908), 99 L. T. 806; 72 J. P. 487; 6 L. G. R. 1171	401, 404, 405
Bristol Corpn. v. Sinnott, [1918] 1 Ch. 62; 87 L. J. (Ch.) 30; 117 L. T. 644; 82 J. P. 9; 62 Sol. Jo. 63; 15 L. G. R. 871, C. A.	390
Bristow v. Cornican (1878), 2 App. Cas. 641	69
British Medical and General Life Association, Re (1888), 39 Ch. D. 61; 57 L. J. (Ch.) 874; 59 L. T. 134; 37 W. R. 52; 4 T. L. R. 531	422
Brown v. Cocking (1868), L. R. 3 Q. B. 672; 9 B. & S. 503; 37 L. J. (Q. B.) 250; 18 L. T. 560; 16 W. R. 933	420
Brydges v. Dix (1891), 7 T. L. R. 215	390

	PAGE
Bulstrode v. Hall (1663), 1 Keb. 532; 1 Sid. 148	204
Butterworth v. West Riding of Yorkshire Rivers Board, [1909] A. C. 45; 78 L. J. (K. B.) 203; 100 L. T. 85; 73 J. P. 89; 25 T. L. R. 117; 7 L. G. R. 189	272, 273
C.	
Caiger v. St. Mary, Islington, Vestry (1881), 50 L. J. (M. C.) 59; 44 L. T. 805; 45 J. P. 570; 29 W. R. 538	392
Cambridge Union v. Parr (1861), 10 C. B. (N. S.) 99; 30 L. J. (M. C.) 241; 4 L. T. 323; 25 J. P. 518; 9 W. R. 636; 7 Jur. (N. S.) 1303	287
Camden (Marquis), <i>Ex parte</i> . See R. v. Powell, <i>Ex parte</i> Camden (Marquis).	
Campbell v. Paddington Corp., [1911] 1 K. B. 869; 80 L. J. (K. B.) 739; 104 L. T. 394; 75 J. P. 277; 27 T. L. R. 232; 9 L. G. R. 387	418
Cardiff Corp. v. Cardiff Pure Ice and Cold Storage Co., Ltd. (1930), 95 J. P. 11; 29 L. G. R. 29, C. A.	390
Carey v. Bexhill Corp., [1904] 1 K. B. 142; 73 L. J. (K. B.) 74; 90 L. T. 58; 68 J. P. 78; 2 L. G. R. 367	404
Carlisle Corp. and Saul's (S. G.) Executors, <i>Re</i> (1907), 71 J. P. 502	402
Carpenter v. Stanley (1868), 33 J. P. 37	288
Cary v. Kingston-upon-Hull Local Board of Health (1864), 34 L. J. (M. C.) 7; 11 Jur. (N. S.) 171	388
Catt v. Tourle (1860), 4 Ch. App. 654; 38 L. J. (Ch.) 665; 21 L. T. 188; 17 W. R. 939	313
Chabot v. Morpeth (Lord) (1850), 15 Q. B. 446; 19 L. J. (Q. B.) 377; 15 L. T. (o. s.) 364	422
Chatham Corp. v. Wright (1929), 142 L. T. 431; 94 J. P. 43; 28 L. G. R. 4	405, 409
Chatterton v. Glastonbury R.D.C., [1915] 3 K. B. 707; 84 L. J. (K. B.) 1865; 113 L. T. 740; 79 J. P. 441; 13 L. G. R. 1352	401
Chester Corp. v. Briggs, [1924] 1 K. B. 239; 93 L. J. (K. B.) 69; 130 L. T. 221; 68 J. P. 1; 40 T. L. R. 85; 68 Sol. Jo. 276; 21 L. G. R. 807; 404, 409	
Chorley, <i>Ex parte</i> . See R. v. Hendon R.D.C., <i>Ex parte</i> Chorley.	
Church v. Inclosure Commissioners (1862), 11 C. B. (N. S.) 664; 31 L. J. (C. P.) 201; 8 Jur. (N. S.) 893	422
Claclton Local Board v. Young & Sons, [1895] 1 Q. B. 395; 64 L. J. (M. C.) 124; 59 J. P. 581; 15 R. 92; <i>sub nom</i> Great Clacton Local Board v. Young & Sons, 71 L. T. 377; 43 W. R. 219; <i>sub nom</i> Clacton Local Board v. Harman, 11 T. L. R. 118	399
Clark v. Joslin (1873), 27 L. T. 762; 21 W. R. 294	
Clarke v. Somersetshire Drainage Commissioners (1888), 57 L. J. (M. C.) 96; 59 L. T. 670; 52 J. P. 308; 36 W. R. 890; 4 T. L. R. 639	267
Clegg v. Handi (1890), 44 Ch. D. 503; 59 L. J. (Ch.) 477; 62 L. T. 502; 35 J. P. 180; 36 W. R. 433; 6 T. L. R. 233, C. A.	313
Clowes v. Staffordshire Potteries Waterworks Co. (1872), 8 Ch. App. 125; 42 L. J. (Ch.) 107; 27 L. T. 521; 36 J. P. 760; 21 W. R. 32	268
Coaker v. Willocks, [1911] 1 K. B. 124; 80 L. J. (K. B.) 1026; 104 L. T. 769; 27 T. L. R. 357, C. A.	327
Coleman v. Griffin. See Griffin v. Coleman.	
v. Kirkaldy, [1882] W. N. 103	70
Cook v. Ipswich Local Board (1871), 1 L. R. 6 Q. B. 451; 40 L. J. (M. C.) 169; 24 L. T. 579; 35 J. P. 566; 19 W. R. 1079	399, 393, 394
Coverdale v. Charlton (1878), 4 Q. B. D. 104; 48 L. J. (Q. B.) 128; 40 L. T. 88; 43 J. P. 268; 27 W. R. 257, C. A.	226
Crossley & Sons Ltd. v. Lightowler (1867), 2 Ch. App. 478; 36 L. J. (Ch.) 584; 16 L. T. 438; 15 W. R. 801	267, 268
Croydon R.D.C. v. Betts, [1914] 1 Ch. 870; 83 L. J. (Ch.) 709; 78 J. P. Jo. 160; 58 Sol. Jo. 556; 12 L. G. R. 906	303, 397
Croxsdale v. Sunbury-on-Thames U.D.C., [1898] 2 Ch. 515; 67 L. J. (Ch.) 585; 79 L. T. 26; 62 J. P. 520; 46 W. R. 667; 42 Sol. Jo. 668	278
Crump v. Chorley Corp. (1908), 98 L. T. 805; 72 J. P. 334; 6 L. G. R. 782;	410
Dargan v. Davies (1877), 2 Q. B. D. 118; 46 L. J. (M. C.) 122; 35 L. T. 810; 41 J. P. 468; 25 W. R. 230	327

Davis, <i>Ex parte.</i> See <i>R. v. Minister of Health, Ex parte Davis.</i>	
——— v. Lisl, [1936] 2 K. B. 434; [1936] 2 All E. R. 213; 105 L. J. (K. B.) 563; 155 L. T. 23; 100 J. P. 280; 52 T. L. R. 475; 80 Sol. Jo. 409; 34 L. G. R. 253; 30 Cox, C. C. 412	241
Davis & Sons v. Taff Vale Rail. Co., [1893] A. C. 542; 64 L. J. (Q. B.) 488; 72 L. T. 632; 44 W. R. 172; 11 T. L. R. 400; 11 R. 189	374
Dawson v. Paver (1847), 5 Hare, 415; 16 L. J. (Ch.) 274; 8 L. T. (o. s.) 493; 11 Jur. 766	372
Dell v. Chesham U.D.C., [1921] 3 K. B. 427; 90 L. J. (K. B.) 1322; 125 L. T. 633; 85 J. P. 186; 37 T. L. R. 731; 19 L. G. R. 489	271
Democrat v. Finchley U.D.C. (1912), 78 J. P. 406; 10 L. G. R. 697	392
Demnerley v. Prestwich U.D.C., [1930] 1 K. B. 334; 99 L. J. (K. B.) 25; 141 L. T. 602; 94 J. P. 34; 45 T. L. R. 659; 73 Sol. Jo. 530; 27 L. G. R. 618, C. A.	408
De Polignac (Princess), <i>Ex parte.</i> See <i>R. v. Kensington Income Tax Commissioners, Ex parte De Polignac (Princess).</i>	
Derby Corp. v. Grudgings, [1894] 2 Q. B. 496; 63 L. J. (M. C.) 170; 72 L. T. 594; 58 J. P. 685; 43 W. R. 74; 10 T. L. R. 455; 10 R. 565; 383, 395	
Despard v. Wilcox (1910), 102 L. T. 103; 74 J. P. 115; 26 T. L. R. 226; 22 Cox, C. C. 258	240
Dewar v. Goodman, [1909] A. C. 72; 78 L. J. (K. B.) 209; 100 L. T. 2; 25 T. L. R. 137; 53 Sol. Jo. 116	313
Dimes v. Grand Junction Canal (Proprietors) (1852), 3 H. L. Cas. 759; 8 State Tr. (n. s.) 85; 19 L. T. (o. s.) 317; 17 Jur. 73	419
Donald v. Suckling (1866), L. R. 1 Q. B. 585; 7 B. & S. 783; 35 L. J. (Q. B.) 232; 14 L. T. 772; 30 J. P. 565; 12 Jur. (n. s.) 795; 15 W. R. 13	145
Driscoll v. Battersea Borough Council, [1903] 1 K. B. 881; 72 L. J. (K. B.) 564; 88 L. T. 795; 67 J. P. 264; 19 T. L. R. 403; 47 Sol. Jo. 452; 1 L. G. R. 511	385
Druce v. Gabb (1858), 31 L. T. (o. s.) 98; 22 J. P. Jo. 319; 6 W. R. 497	148
Duncan v. Jones, [1936] 1 K. B. 218; 105 L. J. (K. B.) 71; 154 L. T. 110; 90 J. P. 399; 52 T. L. R. 26; 79 Sol. Jo. 903; 33 L. G. R. 491; 30 Cox, C. C. 279	240
Durose v. Wilson (1907), 96 L. T. 645; 71 J. P. 263; 21 Cox, C. C. 421	354
Durrant v. Branksome U.D.C., [1897] 2 Ch. 291; 66 L. J. (Ch.) 653; 76 L. T. 739; 48 W. R. 134; 13 T. L. R. 482; 41 Sol. Jo. 621, C. A.	271
Dyson v. Forster, [1909] A. C. 98; 78 L. J. (K. B.) 246; 99 L. T. 942; 25 T. L. R. 166; <i>sub nom.</i> Forster v. Dyson, 53 Sol. Jo. 149	312
E.	
East Ham U.D.C. v. Aylett, [1905] 2 K. B. 22; 74 L. J. (K. B.) 471; 92 L. T. 420; 69 J. P. 265; 53 W. R. 492; 21 T. L. R. 406; 3 L. G. R. 541; <i>sub nom.</i> Aylett v. East Ham U.D.C., 49 Sol. Jo. 446	394
East London Rail. Co. v. Whitechurch (1874), L. R. 7 H. L. 81; 43 L. J. (M. C.) 159; 30 L. T. 412; 38 J. P. 484; 22 W. R. 665	373
Eccles v. Wirral Rural Sanitary Authority (1886), 17 Q. B. D. 107; 55 L. J. (M. C.) 106; 50 J. P. 599; 34 W. R. 412; 2 T. L. R. 416	395
Elston v. Rose (1868), L. R. 4 Q. B. 4; 9 B. & S. 509; 38 L. J. (Q. B.) 6; 19 L. T. 280; 17 W. R. 52	420
Errington v. Minister of Health, [1935] 1 K. B. 249; 104 L. J. (K. B.) 49; 152 L. T. 154; 98 J. P. 15; 51 T. L. R. 44; 78 Sol. Jo. 754; <i>sub nom.</i> Re Jarrow North Ward (No. 1) Clearance Order, 1933, <i>Ex parte Errington</i> , 32 L. G. R. 481, C. A.	423
Esquimalt Waterworks Co. v. Victoria City Corp., [1907] A. C. 499; 76 L. J. (P. C.) 75; 97 L. T. 492; 23 T. L. R. 762	374
Evans v. Morgan, [1928] 2 K. B. 527; 97 L. J. (K. B.) 703; 139 L. T. 612; 92 J. P. 146; 44 T. L. R. 544; 26 L. G. R. 386	83
——— v. Newport Urban Sanitary Authority (1889), 24 Q. B. D. 264; 59 L. J. (M. C.) 8; 61 L. T. 684; 54 J. P. 374; 38 W. R. 400	387
——— v. Owens, [1895] 1 Q. B. 237; 64 L. J. (M. C.) 59; 72 L. T. 54; 43 W. R. 237; 39 Sol. Jo. 152; 15 R. 228	270
Everton v. Walker (1927), 137 L. T. 594; 91 J. P. 125; 43 T. L. R. 554; 26 L. G. R. 333; 28 Cox, C. C. 376	232
Everton Overseers, <i>Ex parte</i> (1871), L. R. 6 C. P. 245	422

F.

PAGE

Farnworth Local Board v. Compton (1886), 34 W. R. 334; 2 T. L. R. 292, C. A.	391, 395
Farquharson v. Morgan, [1804] 1 Q. B. 552; 63 L. J. (Q. B.) 474; 70 L. T. 152; 58 J. P. 495; 42 W. R. 306; 10 T. L. R. 240; 9 R. 202, C. A. 419, 421 Faulkner v. Hythe Corp., [1927] 1 K. B. 532; 96 L. J. (K. B.) 167; 136 L. T. 329; 91 J. P. 22; 43 T. L. R. 55; 71 Sol. Jo. 20; 25 L. G. R. 60; 405 Fearon v. Warrengate U.D.C. (1910), 44 I. L. T. 235 231	
Fenwick v. Croydon Rural Sanitary Authority, [1891] 2 Q. B. 216; 60 L. J. (M. C.) 161; 65 L. T. 645; 55 J. P. 470; 40 W. R. 134; 7 T. L. R. 594; 384 Finchley Electric Light Co. v. Finchley U.D.C., [1903] 1 Ch. 437; 72 L. J. (Ch.) 297; 88 L. T. 215; 67 J. P. 97; 61 W. R. 375; 19 T. L. R. 238; 47 Sol. Jo. 297, C. A. 102, 103	
Flack v. Church (1917), 87 L. J. (K. B.) 744; 117 L. T. 720; 82 J. P. 59; 34 T. L. R. 32; 15 L. G. R. 951; 26 Cox. C. C. 110 151	
Flannagan v. Bishop Wearmouth Overseers (1857), 8 E. & B. 451; 27 L. J. (M. C.) 46; 36 L. T. (o. s.) 117; 22 J. P. 464; 3 Jur. (n. s.) 1103; <i>sub nom.</i> R. v. Bishop Wearmouth Overseers, 6 W. R. 38 288	
Fletcher v. Beale (1885), 28 Ch. D. 688; 54 L. J. (Ch.) 424; 52 L. T. 541; 33 W. R. 745; 1 T. L. R. 233 268	
Folkestone Corp. v. Brooks, [1893] 3 Ch. 22; 62 L. J. (Ch.) 863; 69 L. T. 403; 58 J. P. 53; 9 T. L. R. 504, C. A. 393 v. Marsh (1905), 94 L. T. 511; 70 J. P. 113; 4 L. G. R. 382; 387	
Formby v. Barker, [1903] 2 Ch. 530; 72 L. J. (Ch.) 716; 89 L. T. 249; 51 W. R. 646; 47 Sol. Jo. 600, C. A. 313	
Fox v. Pett, [1918] 2 K. B. 196; 87 L. J. (K. B.) 929; 119 L. T. 187; 82 J. P. 252; 16 L. G. R. 674 120	
Friern Barnet U.D.C. v. Adams, [1927] 2 Ch. 25; 96 L. J. (Ch.) 145; 136 L. T. 649; 91 J. P. 60; 25 L. G. R. 75, C. A. 394, 397	
Frost v. Minister of Health, [1935] 1 K. B. 286; 104 L. J. (K. B.) 218; 51 T. L. R. 171; <i>sub nom.</i> R. v. Birkenhead, Cambridge Place, Clearance Order, 1934, <i>Ex parte</i> Frost, 152 L. T. 330; 99 J. P. 87; 33 L. G. R. 20; 423	

G.

Garland's Case. See R. v. Inland Revenue Commissioners, Ohlson's Case,
Garland's Case.

Gates, *Ex parte*. See R. v. Maad, *Ex parte* Gates.

George Legge & Son, Ltd. v. Wenlock Corp. See Legge (George) & Son, Ltd.
v. Wenlock Corp.

Giant Causeway Co. v. A.-G. (1808), 5 New Irish Jurist Reports 301 69
Glamorgan Coal Co. v. Glamorganshire Standing Joint Committee, [1916] 2 K. B. 206; 85 L. J. (K. B.) 1193; 114 L. T. 717; 80 J. P. 289; 32 T. L. R. 293; 14 L. G. R. 419, C. A. 246
Goldsamid v. Tunbridge Wells Improvement Commissioners (1866), 1 Ch. App. 349; 35 L. J. (Ch.) 382; 14 L. T. 154; 30 J. P. 419; 12 Jur. (n. s.) 308; 14 W. R. 662 267
Gooding v. Ealing Local Board (1884), 1 T. L. R. 62; Cab. & El. 359 217
Gorton Local Board v. Prison Commissioners (1887), [1904] 2 K. B. 165, n.; 73 L. J. (K. B.) 114, n.; 89 L. T. 478, n.; 68 J. P. 27, n.; 52 W. R. 233, n.; 1 L. G. R. 838, n. 370
Gould v. Bacup Local Board (1881), 50 L. J. (M. C.) 44; 44 L. T. 103; 45 J. P. 325; 29 W. R. 471 395, 396
Granger v. Taunton (1836), 3 Bing. (N. C.) 64; 5 Dowl. 190; 2 Hodg. 196; 3 Scott, 303; 5 L. J. (C. P.) 300 105
Great Northern, Piccadilly and Brompton Rail. Co. v. A.-G., [1909] A. C. 1; 78 L. J. (K. B.) 185; 98 L. T. 731 373
Great Western Rail. Co. v. Swindon and Cheltenham Rail. Co. (1884), 9 App. Cas. 757; 53 L. J. (Ch.) 1075; 51 L. T. 708; 48 J. P. 821; 32 W. R. 957 374
v. West Bromwich Improvement Commissioners (1859), 1 E. & E. 806; 5 Jur. (n. s.) 1054; <i>sub nom.</i> R. v. Great Western Rail. Co., 28 L. J. (M. C.) 246; 7 W. R. 432 410
Greece v. Hunt (1877), 2 Q. B. D. 389; 46 L. J. (M. C.) 202; 36 L. T. 404; 41 J. P. 356; 25 W. R. 643 395, 407

Gregg v. Smith (1873), L. R. 8 Q. B. 302; 42 L. J. (M. C.) 121; 28 L. T. 555;	148
37 J. P. 879; 21 W. R. 737	
Griffin v. Coleman (1859), 4 H. & N. 265; 28 L. J. (Ex.) 134; <i>sub nom.</i>	
Coleman v. Griffin, 32 L. T. (o. s.) 333; 23 J. P. 327	240

H.

Hackett v. Smith, [1917] 2 I. R. 508	385
Hadley, <i>Ex parte</i> . See R. v. North Worcestershire Assessment Committee,	
<i>Ex parte</i> Hadley.	
Hall, <i>Re</i> (1888), 21 Q. B. D. 137; 57 L. J. (Q. B.) 404; 59 L. T. 37; 36	
W. R. 892	422
<i>v.</i> Bolsover U.D.C. (1909), 100 L. T. 372; 73 J. P. 140; 7 L. G. R. 403;	386,
405	
<i>v.</i> Lund (1863), 1 H. & C. 676; 1 New Rep. 287; 32 L. J. (Ex.) 113; 7	
L. T. 692; 9 Jur. (N. S.) 205; 11 W. R. 271	267
<i>v.</i> Potter (1869), 39 L. J. (M. C.) 1; 21 L. T. 454; 34 J. P. 515	389
<i>v.</i> Reid (1882), 10 Q. B. D. 134, n.; 52 L. J. (M. C.) 32, n.; 48 L. T.	
221, n.	270
Hampstead Borough Council <i>v.</i> Western (1907), 71 J. P. 565	386
Handsworth Local Board <i>v.</i> Taylor (1893), [1897] 2 Ch. 442, n.; 69 L. T. 798;	386
Handsworth U.D.C. <i>v.</i> Derrington, [1897] 2 Ch. 438; 66 L. J. (Ch.) 691; 77	
L. T. 73; 61 J. P. 518; 46 W. R. 168; 13 T. L. R. 505; 41 Sol. Jo.	
640	389, 391, 394
Hanwell U.D.C. and Smith, <i>Re</i> (1904), 68 J. P. 496; 2 L. G. R. 1350	393, 394
Harrison <i>v.</i> Barnsley. See Barney, <i>Re</i> , Harrison v. Barney.	
Harrup v. Hirst (1868), L. R. 4 Exch. 43; 38 L. J. (Ex.) 1; 19 L. T. 426; 33	
J. P. 103; 17 W. R. 164	268
Hartley v. Ellinor (1917), 80 L. J. (K. B.) 938; 117 L. T. 304; 81 J. P. 201;	
16 L. G. R. 775; 26 Cox, C. 10	241
Hayles v. Sandown U.D.C., [1903] 1 K. B. 169; 72 L. J. (K. B.) 48; 88 L. T.	
61; 67 J. P. 177; 51 W. R. 348; 1 L. G. R. 187	407
Hepburn v. Leather (1884), 50 L. T. 660	313
Herbert v. Turball (Tuckal) (1663), 1 Keb. 589; 1 Sid. 162; T. Raym. 84	353
Herne Bay U.D.C. <i>v.</i> Payne and Wood, [1907] 2 K. B. 130; 76 L. J. (K. B.)	
685; 96 L. T. 666; 71 J. P. 282; 23 T. L. R. 442; 5 L. G. R. 631; 392, 401,	
402, 403	
Heleioth v. Atherton Local Board (1873), L. R. 9 Q. B. 4; 43 L. J. (M. C.) 37;	
20 L. T. 530; 38 J. P. 149; 22 W. R. 58	395
<i>v.</i> Birmingham Corp., [1924] 1 K. B. 200; 93 L. J. (K. B.) 461; 130	
L. T. 476; 88 J. P. 77; 22 L. G. R. 281, C. A.	271
Heston and Isleworth U.D.C. <i>v.</i> Grout, [1897] 2 Ch. 306; 66 L. J. (Ch.) 647;	
77 L. T. 118; 45 W. R. 697; 13 T. L. R. 504; 41 Sol. Jo. 639, C. A.	398
Higgins v. Harding (1872), L. R. 8 Q. B. 7; 42 L. J. (M. C.) 31; 27 L. T.	
483; 37 J. P. 877; 21 W. R. 191	386
Hill <i>v.</i> Cook (1872), 26 L. T. 185; 36 J. P. 552	267
Hodgkinson <i>v.</i> Ennor (1863), 4 B. & S. 229; 2 New Rep. 272; 32 L. J. (Q. B.)	
231; 8 L. T. 451; 27 J. P. 469; 9 Jur. (N. S.) 1162; 11 W. R. 775	266
Holland (Lady) <i>v.</i> Kensington Vestry (1867), L. R. 2 C. P. 565; 36 L. J.	
(M. C.) 105; 17 L. T. 73; 31 J. P. 758; 15 W. R. 1045	385
Holmes <i>v.</i> Twickenham Local Board of Health. See Bonella <i>v.</i> Twickenham	
Local Board of Health, Holmes <i>v.</i> Twickenham Local Board of Health.	
Holy Law South Broughton Burial Board <i>v.</i> Failsworth U.D.C., [1928] 1 K. B.	
231; 96 L. J. (K. B.) 713; 137 L. T. 483; 91 J. P. 104; 43 T. L. R. 519;	
25 L. G. R. 324	391
Hornchurch U.D.C. <i>v.</i> Webber, [1938] 1 K. B. 698; [1938] 1 All E. R. 309;	
158 L. T. 258; 54 T. L. R. 358; 82 Sol. Jo. 157	401, 404
Hornsey District Council <i>v.</i> Smith, [1897] 1 Ch. 843; 66 L. J. (Ch.) 476; 76	
L. T. 431; 45 W. R. 581; 13 T. L. R. 322; 41 Sol. Jo. 423, C. A.	392
Hornsey Local Board <i>v.</i> Brewis (1890), 60 L. J. (M. C.) 48; 7 T. L. R. 27;	
<i>sub nom.</i> Brewis <i>v.</i> Hornsey Local Board, 64 L. T.	
288; 55 J. P. 389	391, 392
<i>v.</i> Davis, [1893] 1 Q. B. 756; 62 L. J. (Q. B.) 427; 68	
L. T. 503; 57 J. P. 612; 4 R. 322, C. A.	389
<i>v.</i> Monarch Investment Building Society (1889), 24	
Q. B. D. 1; 59 L. J. (Q. B.) 105; 61 L. T. 867; 54 J. P. 391; 38 W. R.	
85; 6 T. L. R. 30, C. A.	397

TABLE OF CASES

ii

PAGE

Hornsey U.D.C. v. Hennell, [1902] 2 K. B. 73; 71 L. J. (K. B.) 479; 86 L. T. 423; 66 J. P. 613; 50 W. R. 521; 18 T. L. R. 512; 46 Sol. Jo. 452	392
Horrige v. Makinson (1915), 84 L. J. (K. B.) 1294; 113 L. T. 498; 79 J. P. 484; 31 T. L. R. 389; 13 L. G. R. 868	403
Horsey Estate, Ltd. v. Steiger, [1899] 2 Q. B. 79; 65 L. J. (Q. B.) 743; 80 L. T. 857; 47 W. R. 644; 15 T. L. R. 367, C. A.	312
Hosegood v. Camps (1889), 53 J. P. 612; 5 T. L. R. 222	288
Howard v. Lupton (1875), L. R. 10 Q. B. 598; 44 L. J. (M. C.) 160; 40 J. P. 7	148
Hubbard v. Weldon (1909), 25 T. L. R. 356	312
Hulley v. Silversprings Bleaching Co., [1923] 2 Ch. 268; 91 L. J. (Ch.) 207; 126 L. T. 499; 86 J. P. 30; 66 Sol. Jo. 195	267, 271
Hutchings v. Morris (1827), 6 B. & C. 464; 4 Dow. & Ry. (M. C.) 399; 9 Dow. & Ry. (K. B.) 499; 5 L. J. (o. s.) (M. C.) 144	152
Huth v. Clarke (1890), 25 Q. B. D. 391; 59 L. J. (M. C.) 120; 63 L. T. 348; 55 J. P. 86; 38 W. R. 655; 6 T. L. R. 373	117

I.

Ilford Corp. v. Mallinson (1932), 147 L. T. 37; 96 J. P. 185; 48 T. L. R. 358; 30 L. G. R. 201	391
--	-----

J.

Jackson v. Normanby Brick Co., [1890] 1 Ch. 438; 68 L. J. (Ch.) 407; 80 L. T. 482; 45 Sol. Jo. 438, C. A.	268
James v. Masters, [1893] 1 Q. B. 355; 67 L. T. 855; 57 J. P. 167; 41 W. R. 174; 37 Sol. Jo. 67; 5 R. 112	218
Jarrow Local Board v. Kennedy (1870), L. R. 6 Q. B. 128; 35 J. P. 248; 19 W. R. 275	395
Jones v. James (1850), 1 L. M. & P. 65; Cox, M. & H. 290; Rob. L. & W. 197; 10 L. J. (Q. B.) 257; 14 J. P. Jo. 271	422
— v. Llanrwst U.D.C., [1911] 1 Ch. 393; 80 L. J. (Ch.) 145; 103 L. T. 751; 75 J. P. 68; 27 T. L. R. 133; 55 Sol. Jo. 125; 9 L. G. R. 222	266
— v. Mersey Docks. See Mersey Docks v. Cameron, Jones v. Mersey Docks.	
Jowett v. Idle Local Board (1888), 36 W. R. 530; 4 T. L. R. 442, C. A.	384

K.

Kensington Borough Council v. Allen, [1926] 1 K. B. 576; 95 L. J. (K. B.) 481; 134 L. T. 665; 90 J. P. 105; 42 T. L. R. 449; 24 L. G. R. 254	385
Kensington Income Tax Commissioners v. Aramayo, [1916] 1 A. C. 215; 84 L. J. (K. B.) 2160; 113 L. T. 1033; 31 T. L. R. 606; 59 Sol. Jo. 715; sub nom. R. v. Kensington Income Tax Commissioners, <i>Ex parte Aramayo</i> , 6 Tax Cas. 613	422
Kershaw v. Sheffield Corp., (1887), 51 J. P. 759	393
Kinchant, Re. See R. v. Leigh (Lord), Re Kinchant.	

L.

Lagan Navigation Co. v. Lambog Bleaching, Dyeing and Finishing Co., [1927] A. C. 226; 96 L. J. (P. C.) 25; 136 L. T. 417; 91 J. P. 46; 25 L. G. R. 1; Lane v. Cotton (1701), 1 Ld. Raym. 646; 11 Mod. Rep. 12; 12 Mod. Rep. 472; Carth. 487; Holt, K. B. 582; 1 Salk. 17; 1 Com. 100	267
Leach v. R., [1912] A. C. 305; sub nom. Leach v. Public Prosecutions Director, 81 L. J. (K. B.) 616; 106 L. T. 281; 76 J. P. 203; 28 T. L. R. 289; 56 Sol. Jo. 342; 22 Cox, C. C. 721; 7 Cr. App. Rep. 158	358
Leadgate Local Board v. Bland (1881), 45 J. P. 526	278
Leadwith v. Roberts, [1937] 1 K. B. 232; [1936] 3 All E. R. 570; 106 L. J. (K. B.) 20; 155 L. T. 602; 101 J. P. 23; 53 T. L. R. 21; 80 Sol. Jo. 912; 35 L. G. R. 1; 30 Cox, C. C. 500	241
Legge (George) & Son, Ltd. v. Wenlock Corp., [1938] A. C. 204; [1938] 1 All E. R. 37; 107 L. J. (Ch.) 72; 102 J. P. 93; 54 T. L. R. 315; 82 Sol. Jo. 133; 36 L. G. R. 117	271, 273

	PAGE
Leith Magistrates and Town Council v. Gibbes (1882), 9 R. (Ct. of Sess.) 627 ; 386	
Leven v. Webb, [1895] A. C. I ; 64 L. J. (Ch.) 205 ; 71 L. T. 647 ; 59 J. P. 564 ; 11 T. L. R. 81 ; 11 R. 116	225, 226
Lewis v. Poole, [1898] 1 Q. B. 164 ; 67 L. J. (Q. B.) 73 ; 77 L. T. 369 ; 61 J. P. 776 ; 46 W. R. 93 ; 14 T. L. R. 15 ; 42 Sol. Jo. 14	129
Lewisham Union v. Nice, [1924] 1 K. B. 618 ; 93 L. J. (K. B.) 469 ; 88 J. P. 66 ; 22 L. G. R. 235 ; <i>sub nom.</i> Nice v. Lewisham Union, 131 L. T. 22 ; 40 T. L. R. 270 ; 68 Sol. Jo. 520 ; 27 Coxe, C. C. 606	288
Lighthbound v. Higher Bebington Local Board (1885), 18 Q. B. D. 577 ; 55 L. J. (M. C.) 94 ; 53 L. T. 812 ; 50 J. P. 500 ; 34 W. R. 219, C. A.	386
Liverpool Gas Co. v. Everton (1871), L. R. 6 C. P. 414 ; 40 L. J. (M. C.) 104 ; 19 W. R. 412	420
Local Government Act, 1888, Re, <i>Ex parte</i> Somerset County Council (1889), 58 L. J. (Q. B.) 513 ; 61 L. T. 512 ; <i>sub nom.</i> Re Somerset County Council, 54 J. P. 182 ; 5 T. L. R. 712	5
London and North Western Rail. Co. v. St. Pancras, Vestry (1868), 17 L. T. 654	386
London Corp. v. Cox (1867), L. R. 2 H. L. 239 ; 36 L. J. (Ex.) 225 ; 16 W. R. 44	421, 422
L.C.C. v. Alford (1933), unreported	83
<i>v.</i> Wandsworth Borough Council, [1903] 1 K. B. 797 ; 72 L. J. (K. B.) 399 ; 88 L. T. 783 ; 67 J. P. 215 ; 61 W. R. 499 ; 19 T. L. R. 372 ; 47 Sol. Jo. 405 ; 1 L. G. R. 402, C. A.	392
London County Standing Joint Committee v. L.C.C. (1911), 104 L. T. 923 ; 75 J. P. 455 ; 27 T. L. R. 567 ; 9 L. G. R. 1239	5
London School Board v. St. Mary, Islington (1875), 1 Q. B. D. 65 ; 45 L. J. (M. C.) 1 ; 33 L. T. 504 ; 40 J. P. 310 ; 24 W. R. 137	392
London Scottish Permanent Building Society, Re (1893), 63 L. J. (Q. B.) 112 ; 42 W. R. 464 ; 38 Sol. Jo. 43	419
Longfield Parish Council v. Wright (1918), 88 L. J. (Ch.) 119 ; 16 L. G. R. 865	115
Lowden v. Keaveney, [1903] 2 I. R. 82	416
Lowe v. Govett (1832), 3 B. & Ad. 863 ; 1 L. J. (K. B.) 224	204
Lumley v. Wagner (1852), 1 De G. M. & G. 604 ; 21 L. J. (Ch.) 898 ; 19 L. T. (o. s.) 264 ; 16 Jur. 871	313
Lyon v. Fishmongers' Co. (1876), 1 App. Cas. 662 ; 46 L. J. (Ch.) 68 ; 35 L. T. 569 ; 42 J. P. 163 ; 25 W. R. 165	266
M.	
McArdle v. Egan (1934), 150 L. T. 412 ; 98 J. P. 103 ; 32 L. G. R. 85 ; 30 Cox, C. C. 67, C. A.	240
Macclesfield Corp. v. Macclesfield Grammar School, [1921] 2 Ch. 189 ; 90 L. J. (Ch.) 477 ; 126 L. T. 15 ; 65 Sol. Jo. 663	390
Macey v. James (1917), 86 L. J. (K. B.) 1257 ; 81 J. P. 213 ; 15 L. G. R. 479	392
McIntyre Bros. v. McGavin, [1893] A. C. 268 ; 60 L. T. 389 ; 57 J. P. 548 ; 1 R. 245.	267
Mackenzie v. Abbott (1926), 24 L. G. R. 444	193
McLoughlin v. Warrington Corp. (1910), 75 J. P. 57, C. A.	418
M'Nab v. Robertson, [1897] A. C. 129 ; 66 L. J. (P. C.) 27 ; 75 L. T. 666 ; 61 J. P. 468	273
Maguire v. Leigh-on-Sea U.D.C. (1906), 95 L. T. 319 ; 70 J. P. 470 ; 34 L. G. R. 979	385
Manchester Corp. v. Chapman (1868), 37 L. J. (M. C.) 173 ; 18 L. T. 640 ; 32 J. P. 582 ; 16 W. R. 974	385
<i>v.</i> Hampson (1886), 35 W. R. 334 ; 3 T. L. R. 466 ; on appeal (1887), 35 W. R. 591 ; 3 T. L. R. 468, C. A.	389, 394
Manfield Corp. v. Butterworth, [1898] 2 Q. B. 274 ; 67 L. J. (Q. B.) 700 ; 78 L. T. 527 ; 62 J. P. 500 ; 46 W. R. 650 ; 14 T. L. R. 431 ; 42 Sol. Jo. 524	404
Marshall, <i>Ex parte</i> . See R. v. Webster, <i>Ex parte</i> Marshall.	
Mason v. Bibby (1864), 2 H. C. & 881 ; 3 New Rep. 482 ; 33 L. J. (M. C.) 105 ; 9 L. T. 692 ; 28 J. P. 121 ; 12 W. R. 382	390, 403
Maude v. Baildon Local Board (1883), 10 Q. B. D. 394 ; 48 L. T. 874 ; 47 J. P. 644	384
Maxwell-Willsire v. Bromley R.D.C. (1917), 87 L. J. (Ch.) 241 ; 82 J. P. 12 ; 16 L. G. R. 414	271

TABLE OF CASES

liii

	PAGE
Mein, <i>Ex parte</i> . <i>See R. v. Jones and Barry U.D.C., Ex parte Mein.</i>	
Merrett v. Charlton Kings U.D.C. (1903), 67 J. P. 419	222
Mersey Docks v. Cameron, Jones v. Mersey Docks (1865), 11 H. L. Cas. 443; 20 C. B. (n. s.) 56; 6 New Rep. 378; 35 L. J. (M. C.) 1; 12 L. T. 643; 29 J. P. 483; 11 Jur. (n. s.) 746; 13 W. R. 1069	323
Midland Rail. Co. v. Watton (1886), 17 Q. B. D. 30; 55 L. J. (M. C.) 99; 54 L. T. 482; 50 J. P. 405; 34 W. R. 524, C. A. 384, 393, 395	
Mile End Union v. Sims, [1905] 2 K. B. 200; 74 L. J. (K. B.) 647; 92 L. T. 238; 69 J. P. 145; 21 T. L. R. 241; 49 Sol. Jo. 261; 3 L. G. R. 349; 20 Cox, C. C. 807	288
Millard v. Balby-with-Hexthorpe U.D.C., [1905] 1 K. B. 60; 74 L. J. (K. B.) 45; 91 L. T. 730; 69 J. P. 13; 53 W. R. 165; 21 T. L. R. 8; 49 Sol. Jo. 13; 2 L. G. R. 1248, C. A. 394	
Minister of Health v. R., <i>Ex parte Yaffe</i> , [1931] A. C. 494; 100 L. J. (K. B.) 306; 47 T. L. R. 237; 75 Sol. Jo. 232; <i>sub nom. R. v. Minister of Health, Ex parte Yaffe</i> , 145 L. T. 98; 95 J. P. 125; 26 L. G. R. 305	47, 49
Moore v. Gamgee (1890), 25 Q. B. D. 244; 59 L. J. (Q. B.) 505; 38 W. R. 669; 422 Morland v. Cook (1868), L. R. 6 Eq. 252; 37 L. J. (Ch.) 825; 18 L. T. 496; 16 W. R. 777	312
Morley, <i>Re</i> (1875), L. R. 20 Eq. 17; 32 L. T. 524; 23 W. R. 532	429
Morris v. Edmonds (1897), 77 L. T. 56; 41 Sol. Jo. 698; 18 Cox, C. C. 627	288
Morrison v. Sheffield Corp., [1917] 2 K. B. 866; 86 L. J. (K. B.) 1456; 117 L. T. 520; 81 J. P. 277; 33 T. L. R. 492; 61 Sol. Jo. 611; 15 L. G. R. 667, C. A. 225	
Moses v. Iggo, [1906] 1 K. B. 516; 75 L. J. (K. B.) 331; 94 L. T. 548; 70 J. P. 251; 50 Sol. Jo. 343; 21 Cox, C. C. 136	270
— v. Midland Rail. Co. (1915), 84 L. J. (K. B.) 2181; 113 L. T. 451; 79 J. P. 367; 31 T. L. R. 440; 14 L. G. R. 91	270, 274
Mouflet v. Cole (1872), L. R. 8 Exch. 32; 42 L. J. (Ex.) 8; 27 L. T. 678; 21 W. R. 175	69
Mullis v. Hubbard, [1903] 2 Ch. 431; 72 L. J. (Ch.) 593; 88 L. T. 661; 67 J. P. 281; 51 W. R. 571; 1 L. G. R. 769	222
Murgatroyd v. Robinson (1857), 7 E. & B. 391; 26 L. J. (Q. B.) 233; 29 L. T. (o. s.) 63; 3 Jur. (n. s.) 615; 5 W. R. 375	267

N.

Nash v. Giles (1926), 96 L. J. (K. B.) 216; 136 L. T. 352; 91 J. P. 19; 43 T. L. R. 121; 25 L. G. R. 66	393
National Trust for Places of Historic Interest or Natural Beauty v. A.G. See Verrall, <i>Re</i> , National Trust for Places of Historic Interest or Natural Beauty v. A.G.	
Newport Corp. v. Lang (1802), 57 J. P. 199	390, 403
Newport Urban Sanitary Authority v. Graham (1882), 9 Q. B. D. 183; 47 L. T. 98; 47 J. P. 133; 31 W. R. 121	386
Newquay U.D.C. v. Rickard, [1911] 2 K. B. 846; 80 L. J. (K. B.) 1164; 105 L. T. 519; 75 J. P. 382; 9 L. G. R. 1042	401
North British Rail Co. v. Holme Cultram Local Board (1889), 54 J. P. 86	379
North Staffordshire Rail Co. v. Hanley Corp. (1909), 73 J. P. 477; 8 L. G. R. 375, C. A.	69
Northbrook (Lord) v. Plumstead Board of Works. <i>See Pound v. Plumstead Board of Works, Northbrook (Lord) v. Plumstead Board of Works.</i>	

O.

Oakey, <i>Ex parte</i> . <i>See R. v. North, Ex parte Oakey.</i>	
Oakley v. Merthyr Tydfil Corp., [1922] 1 K. B. 409; 91 L. J. (K. B.) 345; 126 L. T. 320; 86 J. P. 1; 38 T. L. R. 60; 68 Sol. Jo. 218; 19 L. G. R. 767	400, 401
O'Brien, <i>Re</i> , R. v. Lancashire JJ. (1891), 64 L. T. 562; varied S.C. <i>sub nom. R. v. Lancashire JJ.</i> , 55 J. P. 580; 7 T. L. R. 428, C. A. 147	
Ohlson's Case, Garland's Case. <i>See R. v. Inland Revenue Commissioners, Ohlson's Case, Garland's Case.</i>	
Oxford (Chancellor) and Taylor, <i>Re</i> (1841), 1 Q. B. 952; <i>sub nom. R. v. Oxford University (Chancellor)</i> , 1 Gal. & Dav. 537; 11 L. J. (Q. B.) 37; 6 Jur. 319	422

P.

	PAGE
Paddington, Vestry v. Bramwell (1880), 44 J. P. 815	385
Pallin v. Buckland (1911), 105 L. T. 197; 75 J. P. 362; 9 L. G. R. 544; 22 Cox, C. C. 645	287
Pankhurst v. Jarvis (1910), 101 L. T. 946; 74 J. P. 64; 26 T. L. R. 118; 22 Cox, C. C. 228	240
Pass of Leny, The (1937), <i>Times</i> , April 24	202
Payne v. Burridge (1844), 12 M. & W. 727; 13 L. J. (Ex.) 190; 3 L. T. (o. s.) 78; 8 J. P. 711	378
— v. Cardiff R.D.C., [1932] 1 K. B. 241; 100 L. J. (K. B.) 626; 145 L. T. 575; 95 J. P. 173; 47 T. L. R. 532; 29 L. G. R. 507	408, 409
Peacock v. Young (1860), 21 L. T. 527; 34 J. P. 213; 18 W. R. 134	416
Pearce v. Croydon R.D.C. (1910), 74 J. P. 429; 8 L. G. R. 908	271
— v. Maidenhead Corp., [1907] 2 K. B. 96; 76 L. J. (K. B.) 591; 96 L. T. 639; 71 J. P. 230; 5 L. G. R. 622	406
Pender (Walter) and Ors v. Bulk Oil S.S. Co., Ltd. (1937), 58 Lloyd, L. R. 65	202
Peters v. Cowie (1877), 2 Q. B. D. 131; 46 L. J. (M. C.) 177; 36 L. T. 107; 41 J. P. 597	287
Plumstead Board of Works v. British Land Co. (1875), L. R. 10 Q. B. 203; 44 L. J. (Q. B.) 38; 32 L. T. 94; 39 J. P. 376; 23 W. R. 634	392
Plumstead District Board of Works v. Ecclesiastical Commissioners for England, [1891] 2 Q. B. 361; 64 L. T. 830; 57 J. P. 791; 38 W. R. 700; 136 L. T. 83; 90 J. P. 169; 42 T. L. R. 677; 70 Sol. Jo. 795; 25 L. G. R. 405, C. A.	392
Poplar Board of Works v. Love (1874), 29 L. T. 915; 38 J. P. 246	385
Poplar Union v. Martin, [1905] 1 K. B. 728; 74 L. J. (K. B.) 306; 92 L. T. 197; 69 J. P. 146; 53 W. R. 398; 21 T. L. R. 240; 49 Sol. Jo. 261; 3 L. G. R. 340; 20 Cox, C. C. 785, C. A.	288
Portchaw U.D.C. v. Brogden, [1917] 1 Ch. 534; 86 L. J. (Ch.) 393; 116 L. T. 405; 81 J. P. 137; 61 Sol. Jo. 300; 15 L. G. R. 601	403
Portsmouth Corp. v. Hall (1907), 98 L. T. 513; 71 J. P. 564; 24 T. L. R. 76; 6 L. G. R. 16, C. A.	387
— v. Smith (1883), 13 Q. B. D. 184; 53 L. J. (Q. B.) 92; 50 L. T. 308; 48 J. P. 404, C. A.; affirmed (1885), 10 App. Cas. 364; 54 L. J. (Q. B.) 473; 53 L. T. 394; 49 J. P. 676	384, 410
Postmaster-General v. Birmingham Corp., [1936] 1 K. B. 66; 105 L. J. (K. B.) 10; 153 L. T. 405; 99 J. P. 361; 51 T. R. L. 581; 79 Sol. Jo. 592; 33 L. G. R. 396, C. A.	315
— v. Edinburgh Corp. (1897), 10 Ry. & Can. Tr. Cas. 247; 102 L. G. R. 544; 21 Cox, C. C. 785, C. A.	102
— v. Glasgow Corp. (1900), 10 Ry. & Can. Tr. Cas. 238; 102, 319 Hendon U.D.C., [1914] 1 K. B. 564; 83 L. J. (K. B.) 618; 110 L. T. 213; 78 J. P. 145; 30 T. L. R. 171; 12 L. G. R. 437; 15 Ry. & Can. Tr. Cas. 185, C. A.	101, 318
— v. Hutchings, [1916] 1 K. B. 774; 85 L. J. (K. B.) 1008; 115 L. T. 78; 80 J. P. 249; 32 T. L. R. 296; 14 L. G. R. 554	319
— v. London Corp. (1898), 78 L. T. 120; 62 J. P. 390; 14 T. L. R. 222; 10 Ry. & Can. Tr. Cas. 234	101, 319
Pound v. Plumstead Board of Works, Northbrook (Lord) v. Plumstead Board of Works (1871), L. R. 7 Q. B. 183; 41 L. J. (M. C.) 61; 25 L. T. 461; 36 J. P. 468; 20 W. R. 177	392
Property Exchange, Ltd. v. Wandsworth Board of Works, [1902] 2 K. B. 61; 71 L. J. (K. B.) 515; 86 L. T. 481; 66 J. P. 435; 18 T. L. R. 464; 46 Sol. Jo. 378, C. A.	387
	R.
R. v. Acaster (1912), 106 L. T. 384; 76 J. P. 283; 28 T. L. R. 321; 22 Cox, C. C. 743; 7 Cr. App. Rep. 187	358
— v. Birley, etc., Kirkham Division of Lancashire JJ. (1891), 55 J. P. 88	146
— v. Bloomsbury Income Tax Commissioners, [1915] 3 K. B. 768; 85 L. J. (K. B.) 129; 113 L. T. 1015; 31 T. L. R. 565; 7 Tax Cas. 59	420
— v. Board of Trade, R. v. Light Railway Commissioners, [1915] 3 K. B. 536; 84 L. J. (K. B.) 2043; 113 L. T. 711; 79 J. P. 531; 31 T. L. R. 493; 13 L. G. R. 832, C. A.	422

PAGE

R. v. Braithwaite, [1918] 2 K. B. 319; 87 L. J. (K. B.) 864; 119 L. T. 170; 82 J. P. 242; 34 T. L. R. 406; 16 L. G. R. 580; (1913-25), 2 B. R. A. 626, C. A.	390, 403
—(on the Prosecution of Cleckheaton Local Board of Health) <i>v.</i> Burnup (1886), 50 J. P. 598	384
— <i>v.</i> Cambridgeshire County Council, <i>Ex parte</i> River Great Ouse Catchment Board, [1937] 1 K. B. 201; [1936] 3 All E. R. 352; 106 L. J. (K. B.) 103; 155 L. T. 559; 101 J. P. 1; 53 T. L. R. 84; 34 L. G. R. 597; 80 Sol. Jo. 934	159
— <i>v.</i> Chainey, [1914] 1 K. B. 137; 83 L. J. (K. B.) 306; 100 L. T. 752; 78 J. P. 127; 30 T. L. R. 51; 23 Cox. C. C. 620; 9 Cr. App. Rep. 175, C. C. A.	354
— <i>v.</i> Coulson (1890), 55 J. P. 262	325
— <i>v.</i> Cross (1812), 3 Camp. 224	267
— <i>v.</i> Curtis (1886), 15 Cox. C. C. 746	83
— <i>v.</i> Darlington Local Board of Health (1865), 6 B. & S. 562; 6 New Rep. 178; 35 L. J. (Q. B.) 45; 29 J. P. 410; 13 W. R. 780	272
— <i>v.</i> Dean (1924), 18 Cr. App. Rep. 133, C. C. A.	241
— <i>v.</i> De Munck, [1918] 1 K. B. 635; 87 L. J. (K. B.) 682; 119 L. T. 88; 82 J. P. 160; 34 T. L. R. 305; 62 Sol. Jo. 405; 26 Cox. C. C. 302, C. C. A.	354
— <i>v.</i> Electricity Commissioners, [1924] 1 K. B. 171; 93 L. J. (K. B.) 390; 130 L. T. 164; 88 J. P. 13; 39 T. L. R. 715; 68 Sol. Jo. 188; 21 L. G. R. 719, C. A.	421, 423
— <i>v.</i> Flintan (1830), 1 B. & Ad. 227; 9 L. J. (o. s.) (M. C.) 33	288
— <i>v.</i> Goole Local Board, [1891] 2 Q. B. 212; 60 L. J. (Q. B.) 617; 64 L. T. 595; 55 J. P. 535; 39 W. R. 608	384
— <i>v.</i> Hatton, [1926] 2 K. B. 322; 94 L. J. (K. B.) 863; 133 L. T. 735; 89 J. P. 164; 41 T. L. R. 637; 28 Cox. C. C. 43; 19 Cr. App. Rep. 29.	358
— <i>v.</i> Health Minister. <i>See R. v. Minister of Health, Ex parte Villiers.</i>	
— <i>v.</i> Hendon R.D.C., <i>Ex parte</i> Chorley, [1933] 2 K. B. 696; 102 L. J. (K. B.) 658; 149 L. T. 535; 97 J. P. 210; 49 T. L. R. 482; 31 L. G. R. 332	423
— <i>v.</i> Herford (1860), 3 E. & E. 116; 29 L. J. (Q. B.) 249; 2 L. T. 459; 24 J. P. 628; 6 Jur. (n. s.) 750; 8 W. R. 579	422
— <i>v.</i> Hodgkinson (1829), 10 B. & C. 74; 2 Man. & Ry. (M. C.) 603; 5 Man. & Ry. (K. B.) 162; 8 L. J. (o. s.) (M. C.) 47	149
— <i>v.</i> Hopkins (1900), 64 J. P. 582	288
— <i>v.</i> Income Tax Special Purposes Commissioners (1888), 21 Q. B. D. 313; 57 L. J. (Q. B.) 513; 59 L. T. 455; 53 J. P. 84; 36 W. R. 776; 4 T. L. R. 636; 2 Tax Cas. 332, C. A.	420
— <i>v.</i> Inland Revenue Commissioners, <i>Ex parte</i> Sylvester, [1907] 1 K. B. 108; 76 L. J. (K. B.) 41; 96 L. T. 201; 71 J. P. 86; 23 T. L. R. 83	146
— <i>v.</i> ————— Ohlison's Case, Garland's Case, [1891] 1 Q. B. 485; 60 L. J. (Q. B.) 376; 64 L. T. 57; 55 J. P. 117; 39 W. R. 317; 7 T. L. R. 121	146
— <i>v.</i> Jones and Barry U.D.C., <i>Ex parte</i> Mein (1907), 96 L. T. 723; 71 J. P. 326; 5 L. G. R. 722	402
— <i>v.</i> Kensington Income Tax Commissioners, <i>Ex parte</i> de Polignac (Princess), [1917] 1 K. B. 486; 82 L. J. (K. B.) 257; 116 L. T. 136; 33 T. L. R. 113; 61 L. R. 182, C. A.	424
— <i>v.</i> Lancashire JJ. <i>See O'Brien, Re. R. v. Lancashire JJ.</i>	
— <i>v.</i> Leigh (Lord), <i>Re</i> Kinchant, [1897] 1 Q. B. 132; 66 L. J. (Q. B.) 56; 75 L. T. 339; 61 J. P. 4; 13 T. L. R. 41; 41 Sol. Jo. 65; 18 Cox. C. C. 426, C. A.	261
— <i>v.</i> Light (1857), Dears. & B. 332; 27 L. J. (M. C.) 1; 36 L. T. (o. s.) 137; 21 J. P. 758; 3 Jur. (n. s.) 1130; 6 W. R. 42; 7 Cox. C. C. 389	240
— <i>v.</i> Light Railway Commissioners. <i>See R. v. Board of Trade, R. v. Light Railway Commissioners.</i>	
— <i>v.</i> Local Government Board (1882), 10 Q. B. D. 309; 52 L. J. (M. C.) 4; 48 L. T. 173; 47 J. P. 228; 31 W. R. 72, C. A.	395, 397, 409
— <i>v.</i> —————, <i>Ex parte</i> Thorp (1914), 84 L. J. (K. B.) 1184; 112 L. T. 860; 79 J. P. 248; 13 L. G. R. 402	397
— <i>v.</i> L.C.C., [1893] 2 Q. B. 454; 63 L. J. (Q. B.) 4; 69 L. T. 580; 58 J. P. 21; 42 W. R. 1; 9 T. L. R. 601; 37 Sol. Jo. 669; 4 R. 331, C. A.	372, 373, 422
— <i>v.</i> Marsden (1868), L. R. 1 C. C. R. 131; 37 L. J. (M. C.) 80; 18 L. T. 298; 32 J. P. 436; 16 W. R. 711; 11 Cox. C. C. 90	240

	PAGE
R. v. Maude (1842), 2 Dowl. (N. S.) 58; 11 L. J. (M. C.) 120; 6 J. P. 535; 6 <i>Jur.</i> 646	287
— v. Mead, <i>Ex parte Gates</i> (1895), 64 L. J. (M. C.) 169; 59 J. P. 150; 11 T. L. R. 242	92
— v. Minister of Health, <i>Ex parte Aldridge</i> , [1925] 2 K. B. 363; 94 L. J. (K. B.) 707; 133 L. T. 139; 89 J. P. 114; 41 T. L. R. 465; 23 L. G. R. 449	401, 409
— v. —————, <i>Ex parte Davis</i> , [1929] 1 K. B. 619; 98 L. J. (K. B.) 686; 141 L. T. 6; 93 J. P. 49; 45 T. L. R. 345; 27 L. G. R. 677, C. A.	423
— v. —————, <i>Ex parte Villiers</i> , [1936] 2 K. B. 29; [1936] 1 All E. R. 817; 154 L. T. 630; 100 J. P. 212; 52 T. L. R. 408; 80 Sol. Jo. 426; 34 L. G. R. 203	37, 424
— v. Moon, [1910] 1 K. B. 818; 79 L. J. (K. B.) 505; 4 Cr. App. Rep. 171; <i>sub nom.</i> R. v. F. M. and E. M., 74 J. P. 231, C. C. A.	354
— v. Newcastle-upon-Tyne Corp. (1889), 60 L. T. 963; 53 J. P. 788; 5 T. L. R. 467	216
— v. Newport Local Board of Health (1863), 3 B. & S. 341; 32 L. J. (M. C.) 97; 9 J. P. (s. s.) 746; 11 W. R. 263	385, 393
— v. North, <i>Ex parte Oakley</i> , [1927] 1 K. B. 491; 96 L. J. (K. B.) 77; 136 L. T. 387; 43 T. L. R. 60; 70 Sol. Jo. 1181, C. A.	420, 421
— v. North Worcestershire Assessment Committee, <i>Ex parte Hadiley</i> , [1929] 2 K. B. 397; 98 L. J. (K. B.) 605; 141 L. T. 557; 93 J. P. 199; 45 T. L. R. 525; 27 L. G. R. 458; (1928-31), 1 B. R. A. 279	423
— v. Northumberland JJ., <i>Ex parte Amble U.D.C.</i> (1907), 96 L. T. 700; 71 J. P. 331; 5 L. G. R. 1110	147
— v. Oxfordshire (Inhabitants) (1830), 1 B. & Ad. 280; 8 L. J. (o. s.) (K. B.) 354	271
— v. Poplar Borough Council (No. 1), [1922] 1 K. B. 72; 91 L. J. (K. B.) 163; 126 L. T. 189; 85 J. P. 273; 37 T. L. R. 963; 66 Sol. Jo. (W. R.) 2; 19 L. G. R. 675; (1913-25), 2 B. R. A. 810, C. A.	347
— v. Powell, <i>Ex parte Camden (Marquis)</i> , [1925] 1 K. B. 641; 94 L. J. (K. B.) 433; 132 L. T. 766; 89 J. P. 64; 41 T. L. R. 277; 23 L. G. R. 391	422
— v. Ralphs (1913), 9 Cr. App. Rep. 86, C. C. A.	354
— v. Slade (1896), 65 L. J. (M. C.) 108; 74 L. T. 656; 60 J. P. 358; 18 Cox, C. C. 316	92
— v. Swindon Local Board (1870), 4 Q. B. D. 305; 48 L. J. (M. C.) 119; 40 L. T. 424; 43 J. P. 431; 27 W. R. 732; on appeal (1880), 49 L. J. (Q. B.) 522, C. A.	394
— v. Tynemouth Corp., [1911] 2 K. B. 361; 80 L. J. (K. B.) 892; 105 L. T. 217; 75 J. P. 420; 9 L. G. R. 953	219
— v. Wallasey Local Board of Health (1869), L. R. 4 Q. B. 351; 10 B. & S. 428; 38 L. J. (Q. B.) 217; 21 L. T. 90; 33 J. P. 677; 17 W. R. 766	388
— v. Webster, <i>Ex parte Marshall</i> (1931), 95 J. P. 226; 30 L. G. R. 20	422
— v. West Riding of Yorkshire County Council, [1895] 1 Q. B. 805; 64 L. J. (M. C.) 140; 72 L. T. 520; 59 J. P. 340; 43 W. R. 386; 11 T. L. R. 311; 18 Cox, C. C. 141; 14 R. 391, C. A.	246
— v. Westminster Unions Assessment Committee, <i>Ex parte Woodward & Sons</i> , [1917] 1 K. B. 832; 86 L. J. (K. B.) 698; 116 L. T. 601; 81 J. P. 93; 18 L. G. R. 199; (1913-25), 2 B. R. A. 582	390
— v. Yeomans (1860), 1 L. T. 369; 24 J. P. 149	388
Randall v. Lynch (1810), 12 East, 179	311
Rawlings v. Smith, [1938] 1 K. B. 675; [1938] 1 All E. R. 11; 107 L. J. (K. B.) 151; 158 L. T. 874; 54 T. L. R. 255; 81 Sol. Jo. 1024; 36 L. G. R. 99	241
Reeve v. Eastwood (1888), 53 J. P. 134	288
— v. Walker, [1932] 1 K. B. 454; 101 L. J. (K. B.) 324; 146 L. T. 137; 96 J. P. 3; 48 T. L. R. 102; 30 L. G. R. 17; 29 Cox, C. C. 410;	287
— v. Yeates (1862), 1 H. & C. 435; 31 L. J. (M. C.) 241; 26 J. P. 808; 8 <i>Jur.</i> (n. s.) 761; 10 W. R. 779	287
Richards v. Kessick (1888), 57 L. J. (M. C.) 48; 59 L. T. 318; 52 J. P. 756; 387, 398	
Rishhton v. Haslingden Corp., [1898] 1 Q. B. 294; 67 L. J. (Q. B.) 387; 77 L. T. 620; 63 J. P. 85; 14 T. L. R. 155	405
River Dee, Chester (1875), Q. B. D., June 10, M. S.	230
River Great Ouse Catchment Board, <i>Ex parte</i> . See R. v. Cambridgeshire County Council, <i>Ex parte</i> River Great Ouse Catchment Board.	
River Ribble Joint Committee v. Halliwell, [1899] 2 Q. B. 385; 68 L. J. (Q. B.) 984; 81 L. T. 38; 63 J. P. 708; 48 W. R. 22; 15 T. L. R. 455, C. A.	273

River Wear Commissioners v. Adamson (1877), 2 App. Cas. 743; 47 L. J. (Q. B.) 193; 37 L. T. 543; 42 J. P. 244; 28 W. R. 217; 3 Asp. M. L. C. 521	373
Roberts v. Regnart (1921), 126 L. T. 667; 86 J. P. 77; 20 L. G. R. 142; 27 Cox. C. C. 198	288
— v. Rose (1865), L. R. 1 Exch. 82; 4 H. & C. 103; 35 L. J. (Ex.) 62; 13 L. T. 471; 30 J. P. 5; 12 Jur. (N. S.) 78; 14 W. R. 223	267
Robertson v. Bristol Corpn., [1900] 2 Q. B. 198; 69 L. J. (Q. B.) 590; 82 L. T. 516; 64 J. P. 339; 48 W. R. 498; 16 T. L. R. 359; 44 Sol. Jo. 426, C. A.	388, 400
Robinson v. Barton-Eccles Local Board (1883), 8 App. Cas. 708; 53 L. J. (Ch.) 226; 50 L. T. 57; 48 J. P. 276; 32 W. R. 249	383
— v. Currey (1881), 7 Q. B. 465; 50 L. J. (Q. B.) 561; 45 L. T. 368; 46 J. P. 148; 30 W. R. 39, C. A.	151
Ross v. Taylerson (1898), 63 J. P. 181	151
Ruff v. Secretary of State for Home Department (1896), 60 J. P. 343; 12 T. L. R. 362	255
Rumball v. Schmidt (1882), 8 Q. B. D. 603; 46 L. T. 661; 46 J. P. 567; 30 W. R. 949	151

S.

St. Helen's Corpn. v. Kirkham (1885), 16 Q. B. D. 403; 50 J. P. 647; 34 W. R. 440	385
St. Saviour's Union v. Burbidge, [1900] 2 Q. B. 695; 69 L. J. (Q. B.) 886; 83 L. T. 317; 64 J. P. 725; 48 W. R. 685; 16 T. L. R. 532; 44 Sol. Jo. 675; 19 Cox. C. C. 573	288
Sandgate District Local Board of Health v. Keene, [1892] 1 Q. B. 831; 61 L. J. (Q. B.) 775; 66 L. T. 741; 56 J. P. 484; 8 T. L. R. 432, C. A.	394
Savory v. Shurey. See Shurey, Re, Savory v. Shurey.	
Sevenoaks U.D.C. v. Twynham, [1929] 2 K. B. 440; 98 L. J. (K. B.) 537; 141 L. T. 566; 93 J. P. 189; 45 T. L. R. 508; 73 Sol. Jo. 334; 27 L. G. R. 525	140
Shanklin Local Board v. Millar (1880), 5 C. P. D. 272; 49 L. J. (Q. B.) 512; 42 L. T. 738; 44 J. P. 635; 29 W. R. 63	389
Sharpley v. Bear (1903), 67 J. P. 442	390
Sheffield Corpn. v. Anderson (1894), 64 L. J. (M. C.) 44; <i>sub nom.</i> Sheffield Corpn. v. Alexander, 72 L. T. 242; 14 R. 275, C. A.	404
Shurey, Re, Savory v. Shurey, [1918] 1 Ch. 263; 87 L. J. (Ch.) 245; 118 L. T. 355; 34 T. L. R. 171; 62 Sol. Jo. 246	353
Silvester, <i>Ex parte</i> . See R. v. Inland Revenue Commissioners, <i>Ex parte</i> Silvester.	
Simcox v. Handsworth Local Board (1881), 8 Q. B. D. 39; 51 L. J. (Q. B.) 168; 46 J. P. 260; 30 W. R. 273	392, 407
Singleton v. Ellison, [1895] 1 Q. B. 607; 64 L. J. (M. C.) 123; 72 L. T. 236; 59 J. P. 119; 43 W. R. 424; 18 Cox. C. 79; 16 R. 201	354
Sion College v. London Corpn., [1900] 2 Q. B. 581; 69 L. J. (Q. B.) 766; 83 L. T. 76; 16 T. L. R. 449; affirmed, [1901] 1 K. B. 617; 70 L. J. (K. B.) 369; 84 L. T. 133; 65 J. P. 324; 49 W. R. 361; 17 T. L. R. 223, C. A.	374
Smedley v. Companies' Registrar, [1919] 1 K. B. 97; 88 L. J. (K. B.) 345; 120 L. T. 277; 83 J. P. 18; 35 T. L. R. 92; 26 Cox. C. C. 371	151
Smith v. Birkenhead Corpn., [1938] 1 K. B. 238; [1937] 4 All E. R. 75; 107 L. J. (K. B.) 133; 168 L. T. 66; 102 J. P. 1; 54 T. L. R. 24; 81 Sol. Jo. 863; 35 L. G. R. 575	400
— v. Birmingham Union (1857), 7 E. & B. 483; 3 Jur. (N. S.) 769; <i>sub nom.</i> R. v. Smith, 26 L. J. (M. C.) 105; 29 L. T. (o. s.) 76; 21 J. P. 694; 5 W. R. 496	323
— v. Giddy, [1904] 2 K. B. 448; 73 L. J. (K. B.) 894; 91 L. T. 296; 53 W. R. 207; 26 T. L. R. 596; 48 Sol. Jo. 589	226
Somerset County Council, <i>Re</i> . See Local Government Act, 1888, <i>Re</i> , <i>parte</i> Somerset County Council.	
South Eastern Rail Co. v. Railway Commissioners (1881), 6 Q. B. D. 586; 50 L. J. (Q. B.) 201; 44 L. T. 203; 45 J. P. 388; 3 Ry. & Can. Tr. Cas. 464, C. A.	422
South Shields (Thames Street) Clearance Order, 1931. See Bowman, <i>Re</i> , South Shields (Thames Street) Clearance Order, 1931.	
Southampton Corpn. v. Lord (1903), 67 J. P. 189; 1 L. G. R. 324, C. A.	403

	PAGE
Spencer's Case (1883), 5 Co. Rep. 16a	312
Spike v. Thompson (1875), cited in, [1882] W. N. 103	70
Spokes v. Banbury Board of Health (1865), L. R. 1 Eq. 42; 35 L. J. (Ch.) 105; 13 L. T. 428, 453; 30 J. P. 54; 11 Jur. (n. s.) 1010; 14 W. R. 128, 169	268
Stileman-Gibbard v. Wilkinson, [1897] 1 Q. B. 749; 66 L. J. (Q. B.) 215; 76 L. T. 90; 61 J. P. 214; <i>sub nom.</i> Wilkinson, Jarvis and Clode v. Stileman-Gibbard, 13 T. L. R. 145	424
Stillwell v. New Windsor Corp., [1932] 2 Ch. 155; 101 L. J. (Ch.) 342; 147 L. T. 306; 78 Sol. Jo. 433; 30 L. G. R. 477	226
Stock v. Meakin, [1906] 1 Ch. 683; 69 L. J. (Ch.) 401; 82 L. T. 248; 48 W. R. 420; 16 T. L. R. 284, C. A.	408
Stoker and Morpeth Corp., <i>Re</i> , [1915] 2 K. B. 511; 84 L. J. (Ch.) 1169; 112 L. T. 753; 79 J. P. 201; 13 L. G. R. 233, C. A.	394
Stollmeyer v. Petroleum Development Co., Ltd., [1918] A. C. 498, n.; 87 L. J. (P. C.) 83; 118 L. T. 518	273
Stourbridge U.D.C. v. Butler and Grove, [1909] 1 Ch. 87; 78 L. J. (Ch.) 59; 99 L. T. 912; 73 J. P. 3; 25 T. L. R. 24; 7 L. G. R. 183	389, 395
Stretford U.D.C. v. Manchester South Junction and Altringham Rail. Co. (1903), 68 J. P. 59; 19 T. L. R. 548; 1 L. G. R. 683, C. A.	388, 392
Sunderland Corp. v. Alcock (1882), 51 L. J. (Ch.) 546; 46 L. T. 377; 30 W. R. 655	377, 396
——— r. Gray, [1928] Ch. 756; 97 L. J. (Ch.) 411; 136 L. T. 405; 91 J. P. 52; 25 L. G. R. 139	390, 391, 395
——— r. Priestman, [1927] 2 Ch. 107; 96 L. J. (Ch.) 441; 137 L. T. 688; 26 L. G. R. 64	387, 397
Surbiton U.D.C. v. Jones (H. C.) & Co. (Surrey), Ltd. (1935), unreported	219
Suttees v. Woodhouse, [1903] 1 K. B. 396; 72 L. J. (K. B.) 302; 88 L. T. 407; 67 J. P. 232, 51 W. R. 275; 19 T. L. R. 221; 47 Sol. Jo. 276; 1 L. G. R. 227, C. A.	408
Sutcliffe v. Booth (1863), 32 L. J. (Q. B.) 136; 27 J. P. 613; 9 Jur. (n. s.) 1037	266
Sweeney v. Spooner (1863), 3 B. & S. 320; 1 New Rep. 209; 32 L. J. (M. C.) 82; 7 L. T. 623; 27 J. P. 181; 9 Jur. (n. s.) 691; 11 W. R. 264	287
Sweet v. Seager (1857), 2 C. B. (n. s.) 119; 2 Saund. & M. 194; 29 L. T. (o. s.) 109; 21 J. P. 406; 3 Jur. (n. s.) 588; 5 W. R. 560	378
Swindon Waterworks Co. v. Wilts and Berks Canal Navigation Co. (1875), L. R. 7 H. L. 697; 45 L. J. (Ch.) 638; 33 L. T. 513; 40 J. P. 804; 24 W. R. 284	268
Sykes v. Huddersfield Corp. (1871), 35 J. P. 614	394
T.	
Taylor v. Oldham Corp. (1876), 4 Ch. D. 395; 48 L. J. (Ch.) 105; 35 L. T. 696; 26 W. R. 178	384
Teddington U.D.C. v. Vilo (1906), 70 J. P. 381; 4 L. G. R. 782	403
Tending Union Guardians v. Downton, [1891] 3 Ch. 265; 61 L. J. (Ch.) 82; 66 L. T. 434; 40 W. R. 145, C. A.	396, 408
Thomas v. Hayward (1869), L. R. 4 Exch. 311; 38 L. J. (Ex.) 175; 20 L. T. 814	313
——— v. Hawkins, [1835] 2 K. B. 249; 104 L. J. (K. B.) 572; 153 L. T. 419; 99 J. P. 265; 51 T. L. R. 514; 79 Sol. Jo. 478; 33 L. G. R. 330; 30 Cox, C. C. 265	241
Thompson v. Falsworth Local Board (1881), 46 J. P. 21	219
Thorp, <i>Ex parte</i> . See R. v. Local Government Board, <i>Ex parte</i> Thorp.	
Timothy v. Simpson (1885), 1 Cr. M. & R. 757; 3 Nev. & M. (M. C.) 127; 5 Tyr. 244; 4 L. J. (M. C.) 73; 4 L. J. (Ex.) 81	240
Tipping v. Eckersley (1885), 2 K. & J. 264	267
Tisdall v. Parnell (1863), 14 I. C. L. R. 1, 27	70
Tottenham Local Board v. Williamson (1893), 62 L. J. (Q. B.) 322; 69 L. T. 51; 67 J. P. 614; 9 T. L. R. 372	385
Tottenham Local Board of Health v. Rowell (1876), 1 Ex. D. 514; 46 L. J. (Q. B.) 432; 35 L. T. 887; 25 W. R. 135, C. A.	396
——— v. —— (1880), 15 Ch. D. 378; 50 L. J. (Ch.) 99; 43 L. T. 616; 29 W. R. 36, C. A.	377, 396, 397

Tregellas v. L.C.C. (1897), 14 T. L. R. 55	225
Truman, Hanbury, Buxton & Co. v. Kerslake, [1894] 2 Q. B. 774; 63 L. J. (M. C.) 222; 58 J. P. 766; 43 W. R. 111; 10 T. L. R. 668; 10 R. 489	385
Tunbridge Wells Local Board v. Akroyd (1880), 5 Ex. D. 199; 49 L. J. (Q. B.) 403; 42 L. T. 640; 44 J. P. 504; 28 W. R. 450, C. A.	304
Turner v. Kingsbury Collieries, Ltd., [1921] 3 K. B. 169; 90 L. J. (K. B.) 1132; 125 L. T. 625; 37 T. L. R. 713; 14 B. W. C. C. 249	421
— v. Ringwood Highway Board (1870), L. R. 9 Eq. 418; 21 L. T. 745; 18 W. R. 424	226
Twickleham U.D.C. v. Munton, [1899] 2 Ch. 603; 68 L. J. (Ch.) 601; 81 L. T. 136; 47 W. R. 660; 15 T. L. R. 457; 43 Sol. Jo. 673, C. A.	405
Twytham v. Badcock, [1932] 2 K. B. 549; 101 L. J. (K. B.) 755; 147 L. T. 35; 96 J. P. 219; 48 T. L. R. 389; 30 L. G. R. 239; 29 Cox, C. C. 448	351

U.

Upperton v. Ridley, [1900] 1 Q. B. 680; affirmed, [1901] 1 K. B. 384; 70 L. J. (K. B.) 249; 84 L. T. 18; 17 T. L. R. 187; affirmed, [1903] A. C. 281; 72 L. J. (K. B.) 535; 88 L. T. 642; 67 J. P. 349; 19 T. L. R. 522; 1 L. G. R. 659; 20 Cox, C. C. 453	255
--	-----

V.

Verdin v. Wray (1877), 2 Q. B. D. 608; 46 L. J. (M. C.) 170; 35 L. T. 942; 41 J. P. 484; 25 W. R. 274	151
Verral, Re, National Trust for Places of Historic Interest or Natural Beauty v. A.-G., [1916] 1 Ch. 100; 85 L. J. (Ch.) 115; 113 L. T. 1208; 80 J. P. 89; 60 Sol. Jo. 141; 14 L. G. R. 171	38
Villiers, <i>Ex parte</i> . See R. v. Minister of Health, <i>Ex parte</i> Villiers.	

W.

Wakefield Corp. v. Cooke, [1904] A. C. 31; 73 L. J. (K. B.) 88; 89 L. T. 707; 68 J. P. 225; 52 W. R. 321; 20 T. L. R. 115; 48 Sol. Jo. 130; 2 L. G. R. 270	404
Wakefield Local Board v. Lee (1876), 1 Ex. D. 336; 35 L. T. 481; 41 J. P. 54	386
Wakefield Urban Sanitary Authority v. Mander (1880), 5 C. P. D. 248; 44 J. P. 522; 28 W. R. 922	386
Walford v. Hackney Board of Works (1894), 43 W. R. 110; 11 T. L. R. 17; 15 R. 10	384
Wallasey U.D.C. v. Walker (W. H.) & Co. (1906), 70 J. P. 199; 4 L. G. R. 1042	402, 403
Wandsworth Local Board v. Murphy (1889), 61 L. T. 777; 6 T. L. R. 29	391, 395
Walters v. Smith (W. H.) & Son, Ltd., [1914] 1 K. B. 595; 83 L. J. (K. B.) 335; 110 L. T. 345; 78 J. P. 118; 30 T. L. R. 158; 58 Sol. Jo. 186	240
Walthamstow Local Board v. Staines, [1891] 2 Ch. 600; 60 L. J. (Ch.) 738; 65 L. T. 430; 7 T. L. R. 446, C. A.	393
Walthamstow U.D.C. v. Sandell (1904), 68 J. P. 509; 2 L. G. R. 835	384, 385
Walton-le-Dale U.D.C. v. Greenwood (1911), 105 L. T. 547; 75 J. P. 541; 9 L. G. R. 1148	391
Wandsworth Board of Works v. United Telephone Co. (1884), 13 Q. B. D. 904; 53 L. J. (Q. B.) 449; 51 L. T. 148; 48 J. P. 676; 32 W. R. 776, C. A.	102, 103
Watts v. Battersea Corp., [1929] 2 K. B. 63; 98 L. J. (K. B.) 273; 140 L. T. 594; 93 J. P. 137; 45 T. L. R. 224; 73 Sol. Jo. 143; 27 L. G. R. 307, C. A.	379, 385
Wealdstone U.D.C. v. Evershed (1905), 69 J. P. 258; 3 L. G. R. 722	394, 397
Webber v. Richards (1844), 2 L. T. (o.s.) 420	204
West Derby Union v. Metropolitan Life Assurance Society, [1897] A. C. 647; 66 L. J. (Ch.) 726; 77 L. T. 284; 61 J. P. 820; 13 T. L. R. 536	373
West Ham Corp. v. Sharp, [1907] 1 K. B. 445; 76 L. J. (K. B.) 307; 96 L. T. 230; 71 J. P. 100; 5 L. G. R. 694	408
— v. Thomas (1908), 73 J. P. 65; 6 L. G. R. 1043	390
West Ham Local Board v. Maddams (1876), 1 Ex. D. 516, n.; 33 L. T. 809; 35 L. T. 887, n.; 40 J. P. 470	396

	PAGE
West Hartlepool Corpn. v. Robinson (1897), 77 L. T. 387; 62 J. P. 35; 46 W. R. 218; 14 T. L. R. 18, C. A.	387, 393
West Midlands Joint Electricity Authority v. Pitt and Others, [1932] 2 K. B. 1; 101 L. J. (K. B.) 401; 147 L. T. 122; 96 J. P. 159; 48 T. L. R. 332;	103
30 L. G. R. 219, C. A.	
West Riding of Yorkshire Rivers Board v. Heckmondwike U.D.C. (1914), 110 L. T. 692; 78 J. P. 190	277
— v. Ravenshorpe U.D.C. (1907), 71 J. E. 209	277
— v. Rawson (1903), 89 L. T. 363; 67 J. P. 407; 1 L. G. R. 736	273
Westbury-on-Severn Rural Sanitary Authority v. Meredith (1885), 30 Ch. D. 387; 55 L. J. (Ch.) 744; 52 L. T. 839; 34 W. R. 217; 1 T. L. R. 641, C. A.	396
White v. Fulham Parish Vestry (1896), 74 L. T. 425; 60 J. P. 327; 12 T. L. R. 328; 40 Sol. Jo. 439	387
Whitfield v. Le Despencer (Lord) (1778), 2 Cowp. 754	321
Willesden Local Board and Wright, <i>Re</i> , [1896] 2 Q. B. 412; 68 L. J. (Q. B.) 567; 75 L. T. 13; 60 J. P. 708; 44 W. R. 676; 12 T. L. R. 539, C. A.	304
Williams v. Neath Assessment Committee (1935), 154 L. T. 261; 100 J. P. 71; 52 T. L. R. 152; 80 Sol. Jo. 77; 34 L. G. R. 80	323
— v. Wandsworth District Board of Works (1884), 13 Q. B. D. 211; 53 L. J. (M. C.) 187; 48 J. P. 439; 32 W. R. 908	386
Wilmot U.D.C. v. Sidebottom (1906), 70 J. P. 537; 5 L. G. R. 80	389
Wilson v. Bolton Corp., [1871], 1 L. R. 7 Q. B. 105; 41 L. J. (M. C.) 4; 25 L. T. 597; 36 J. P. 405; 20 W. R. 246	377
— v. Glossop (1888), 20 Q. B. D. 354; 57 L. J. (Q. B.) 161; 58 L. T. 707; 52 J. P. 246; 36 W. R. 296; 4 T. L. R. 239, C. A.	288
Wimbledon U.D.C. v. Hastings (1902), 87 L. T. 118; 67 J. P. 45	92
Wingate's Patent, <i>Re</i> , [1931] 2 Ch. 272; 100 L. J. (Ch.) 370; 145 L. T. 572; 47 T. L. R. 541; 48 R. P. C. 416	422
Winter v. Woolfe, [1931] 1 K. B. 549; 100 L. J. (K. B.) 92; 144 L. T. 311; 95 J. P. 20; 47 T. L. R. 145; 29 L. G. R. 89; 29 Cox, C. C. 214	354
Winterbottom v. Derby (Lord) (1867), 29 L. R. 2 Exch. 316; 36 L. J. (Ex.) 194; 16 L. T. 771; 31 J. P. 566; 16 W. R. 15	267
Wirral R.D.C. v. Carter, [1903] 1 K. B. 640; 72 L. J. (K. B.) 332; 89 L. T. 171; 67 J. P. 31; 51 W. R. 414; 19 T. L. R. 153; 47 Sol. Jo. 223; 1 L. G. R. 206	400, 402, 404
Wood v. Wand (1849), 3 Exch. 748; 18 L. J. (Ex.) 305; 13 L. T. (o. s.) 212; 13 Jur. 472	207
Woodford U.D.C. v. Henwood (1889), 64 J. P. 148	384, 390, 403
Woodward & Sons, <i>Ex parte</i> . See R. v. Westminster Unions Assessment Committee, <i>Ex parte</i> Woodward & Sons.	
Woolwich Local Board of Health v. Gardiner, [1895] 2 Q. B. 497; 64 L. J. (M. C.) 248; 73 L. T. 218; 59 J. P. 597; 44 W. R. 46; 39 Sol. Jo. 710; 18 Cox, C. C. 173; 15 R. 590	148
Worthington v. Ludlow (1862), 2 B. & S. 508; 31 L. J. (Q. B.) 131; 6 L. T. 283; 26 J. P. 453; 8 Jur. (m. s.) 668; 10 W. R. 621	392
Wortley v. St. Mary, Islington, Vestry (1886), 51 J. P. 166	395
Wright v. Ingle (1885), 16 Q. B. D. 379; 55 L. J. (M. C.) 17; 54 L. T. 511; 50 J. P. 436; 34 W. R. 220; 2 T. L. R. 143, C. A.	392
Wyse v. Leahy (1875), 1 R. 9 C. L. 384	70
Y.	
Yabbicom v. King, [1899] 1 Q. B. 444; 68 L. J. (Q. B.) 560; 80 L. T. 150; 63 J. P. 149; 47 W. R. 318; 43 Sol. Jo. 190	218
Yaffe, <i>Ex parte</i> . See Minister of Health v. R., <i>Ex parte</i> Yaffe.	
Yeudall v. Sweeney, [1922] S. C. (J.) 32; 59 Sol. L. R. 299; [1922] S. L. T. 278	231
Yorkshire West Riding. See West Riding of Yorkshire.	
Young (John) & Co. v. Bankier Distillery Co., [1893] A. C. 691; 69 L. T. 838; 68 J. P. 100	266

OFFICIAL BUILDINGS

PRELIMINARY	PAGE	PAGE
LOCAL AUTHORITIES OTHER THAN PARISH COUNCILS	1	USE OF PUBLIC OFFICES BY APPROVED SOCIETIES, INSURANCE COMMITTEES, TRADE UNIONS AND OTHER BODIES
PARISH COUNCILS AND PARISH MEETINGS	2	COUNTY BUILDINGS
USE OF FORMER OFFICES OF BOARDS OF GUARDIANS	2	JUDICIAL BUILDINGS
USE OF PUBLIC OFFICES FOR CERTS, ETC.	3	LONDON
	4	

See also titles :

ACQUISITION OF LAND ; APPROPRIATION OF LAND ; COMPULSORY PURCHASE OF LAND ; CORPORATE LAND ;	ENTERTAINMENTS, PROVISION OF ; JUDGES' LODGINGS ; MORTUARIES ; POST-MORTEM EXAMINATIONS.
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Preliminary.—As from June 1, 1934, the L.G.A., 1933, repealed (a) and replaced in consolidated form the main enactments as to the provision by local authorities of offices and buildings for the transaction of their general business. This repeal includes the powers given to county councils as to the provision of shire halls, county halls and county buildings by the County Buildings Acts, 1826 and 1837 (b), and sects. 3 (iv.) and 65 of L.G.A., 1888 (c), and those given to municipal corporations as to the provision of town halls and council houses by sect. 105 of the Municipal Corporations Act, 1882 (d). These repeals do not, however, affect the enactments in question so far as they relate to assize courts, judges' lodgings, quarter and petty sessions and justices' rooms and offices. The L.G.A., 1933, similarly repealed the powers given to borough and urban district councils to provide and maintain offices in sect. 197 of the P.H.A., 1875 (e), but in its new provisions (f) places rural district councils (who formerly had no express power of providing offices) on an equal footing with county, borough and urban district councils. Also repealed are the powers given to parish councils by sect. 8 (1) (a), (b) of the L.G.A., 1804 (g), as to the provision of buildings for public offices and meetings, the Vestries Act, 1850 (h), and the Parochial Offices Act, 1861 (i), which allowed vestry rooms and parochial offices to be provided and maintained.

Part V. of the L.G.A., 1933, which relates to offices and buildings, does not, however, extend to the Administrative County of London.

[1]

- (a) L.G.A., 1933, s. 307, Sched. XI. ; 26 Halsbury's Statutes 469, 516.
- (b) 10 Halsbury's Statutes 536, 541.
- (c) *Ibid.*, 689, 789.
- (d) *Ibid.*, 607.
- (e) 13 Halsbury's Statutes 710.
- (f) L.G.A., 1933, ss. 125, 305 ; 26 Halsbury's Statutes 372, 465.
- (g) 10 Halsbury's Statutes 780.
- (h) *Ibid.*, 545.
- (i) *Ibid.*, 553.

Local Authorities other than Parish Councils.—County councils, borough, urban and rural district councils, may under sect. 125 of the L.G.A., 1933 (*k*), acquire or provide halls, offices and other buildings, whether within or without their area, to be used for transacting their business and for public meetings and assemblies. They may also furnish such buildings. For these purposes they may acquire land by agreement by way of purchase, lease or exchange under the general power given by Part VII. of the L.G.A., 1933 (*l*), and, with the consent of and under the conditions imposed by the M. of H. or other appropriate Government department, may do so in advance of immediate requirements (*m*). Power is also given (*n*) to appropriate land for these purposes with the sanction of the M. of H., subject to such adjustment in the accounts of the council as the Minister may direct.

By sub-sect. (2) of sect. 125 of the L.G.A., 1933 (*o*), a council may be authorised to purchase land compulsorily for the purpose of providing halls, offices or buildings under the section and this makes applicable sect. 160 of the Act enabling a compulsory purchase to be authorised by a provisional order of the M. of H. confirmed by a Bill passed by Parliament (*p*).

Money may be borrowed by the council under sect. 195 of the L.G.A., 1933 (*q*), with the consent of the M. of H., to meet the cost of the acquisition of land and of the erection and furniture of buildings provided by them under sect. 125 of the Act. [2]

Parish Councils and Parish Meetings.—As to parish councils, sect. 127 of the L.G.A., 1933 (*r*), allows them to acquire or provide and furnish buildings to be used for transacting the council's business or that of the parish meeting or any other parish business, and for public meetings and assemblies, and further to combine for these purposes with any other parish council, or contribute towards the expense incurred by such council or any other person in acquiring, providing and furnishing buildings suitable for use for any of the purposes already mentioned. A parish council are therefore able to contribute towards the cost of the provision of village halls notwithstanding that the ownership of any such hall is vested in some other body or person such as the British Legion (*s*).

The general provisions as to the acquisition of land by parish councils in sects. 167 and 168 of the L.G.A., 1933 (*t*), apply to the purposes under consideration, that is to say, parish councils may for the purpose of providing such buildings acquire land by agreement by way of purchase, lease or exchange, whether within or without the parish, and if unable to obtain suitable land on reasonable terms may make a representation to the county council who after a local inquiry may submit to the M. of H. a compulsory purchase order for confirmation (*u*).

(*k*) 26 Halsbury's Statutes 372.

(*l*) *Ibid.*, 391.

(*m*) L.G.A., 1933, s. 158; 26 Halsbury's Statutes 392.

(*n*) *Ibid.*, s. 163; *ibid.*, 396; and see title APPROPRIATION OF LAND.

(*o*) 26 Halsbury's Statutes 372.

(*p*) See also title COMPULSORY PURCHASE OF LAND.

(*q*) 26 Halsbury's Statutes 412.

(*r*) *Ibid.*, 373.

(*s*) See Interim Report of Local Government and Public Health Consolidation Committee, 1933, Cmd. 4272, at p. 81.

(*t*) 26 Halsbury's Statutes 398.

(*u*) See titles ACQUISITION OF LAND and COMPULSORY PURCHASE OF LAND.

With the consent of the M. of H. and the county council, a parish council may under sect. 195 of the L.G.A., 1933 (*a*), borrow money to meet the cost of the acquisition of land and of the erection and furniture of buildings provided by them under sect. 127 of the Act. Whether a loan would be sanctioned to meet the whole or part of a contribution paid by the parish council to the cost of buildings provided or furnished by other persons would depend on whether or not the contribution is to be devoted to a capital purpose.

Any of the functions of a parish council may on the application of the parish meeting of a rural parish not having a separate parish council be conferred upon the parish meeting by order made by the county council (*b*). A copy of any such order must be sent by the county council to the M. of H., and the power of the county council to make the order is further subject to the provisions of any grouping order affecting the parish (*c*).

Where the parish council or the representative body of a rural parish own no suitable public room (*d*) which can be used free of charge, use may be made after reasonable notice at all reasonable times, and for certain purposes, of a suitable room which is maintained at the expense of any rate, or which is in the schoolhouse of a public elementary school. The purposes referred to are for the parish meeting, meetings of the parish council or meetings convened by the chairman of either of those bodies, for inquiries held in pursuance of a direction of a Government department or a local authority, or for the administration of public funds within or for the purposes of the parish where such funds are administered by a committee or officer appointed by the parish meeting or council or by a county, borough or district council.

Any expense caused to the persons in control of a room used in the above circumstances, or any damage caused, is to be met or made good in the case of an inquiry as part of the expenses of the inquiry, and in any other case as expenses of the parish council or meeting (*e*). A room used as part of a private dwelling-house cannot be used under sect. 128, nor can there be any interference with the hours in which rooms in schoolhouses are used for educational purposes, or in which rooms used for the administration of justice or police purposes are used for those purposes (*f*). Questions arising as to what is reasonable or suitable are to be determined as to rooms in schoolhouses by the Board of Education, as to rooms used for purposes of administration of justice or police by the Home Secretary, and in any other case by the M. of H. (*g*). [3]

Use of Former Offices of Boards of Guardians.—Rural district councils who before April 1, 1930, exercised the right given by sect. 59 (3) of the L.G.A., 1894 (*h*), to use for their meetings and proceedings the board room and offices of the board of guardians, are entitled (*i*) to continue

(*a*) 26 Halsbury's Statutes 412.

(*b*) L.G.A., 1933, s. 273 (1); 26 Halsbury's Statutes 451.

(*c*) *Ibid.*, s. 273 (1), (2). As to the holding of land for parish purposes where there is no parish council by "the representative body," see *ibid.*, s. 47 (3); 26 Halsbury's Statutes 320.

(*d*) *Ibid.*, s. 128; *ibid.*, 373; replacing L.G.A., 1894, s. 4, now repealed.

(*e*) L.G.A., 1933, s. 128 (2); 26 Halsbury's Statutes 374.

(*f*) *Ibid.*, s. 128 (1), proviso.

(*g*) *Ibid.*, s. 128 (3).

(*h*) 10 Halsbury's Statutes 815.

(*i*) L.G.A., 1933, s. 126 (1); 26 Halsbury's Statutes 373.

to exercise that right at all reasonable hours. The county council (to whom such property was transferred by the L.G.A., 1929 (k)) may, however, terminate such user by not less than three months' notice to the R.D.C., who may in such an event require the county council to provide other suitable accommodation. Differences on this question between the R.D.C. and the county council may be determined by the M. of H. (l). The power is expressed to be exercisable on the application of either council, but the Minister endeavours to secure an agreed submission of the difference before determining it. [4]

Use of Public Offices for Concerts, etc.—Any borough council, or urban or R.D.C. (m), may use offices provided by them for the transaction of business for the purposes of concerts or other entertainments. They may also let the offices for use for such purposes, or for meetings, provided that there is no interference therefrom with the transaction of the business of the local authority.

Concerts or entertainments if provided by the council must be within the restrictions of sect. 56 of the P.H.A., 1925, *i.e.* no stage play nor variety entertainment can be given, nor is any film other than one illustrative of questions of health and disease permitted, and no scenery, theatrical costumes or scenic or theatrical accessories may be used (n). See also title ENTERTAINMENTS, PROVISION OF. [5]

Use of Public Offices by Approved Societies and Insurance Committees, Trade Unions and Other Bodies.—In accordance with regulations made by the M. of H., approved societies under the National Health Insurance Act, 1936, may for the purposes of their meetings use, with or without payment but subject to the consent of the local authority, any offices in buildings belonging to or under the management of a local authority (o). Regulations made by the Minister may also provide for the use of such offices subject to the consent of the local authority and with or without payment by the county and county borough by Insurance Committees constituted under the National Health Insurance Act, 1936 (p).

Where a local authority are in possession of a town hall or offices provided for their own meetings or business, they may, when such premises are not required for those purposes, allow the temporary use thereof by trade unions, friendly societies and other bodies for meetings on terms which involve no expense to the local authority (q). [6]

County Buildings.—Where county halls and other buildings are used both for county council business and for the administration of justice or police purposes, it appears that the control of such buildings is, by virtue of sect. 30 (8) of the L.G.A., 1888 (r), vested in the standing

(k) S. 113; 10 Halsbury's Statutes 953.

(l) L.G.A., 1933, s. 126 (2); 26 Halsbury's Statutes 873.

(m) P.H.A., 1925, s. 70; 13 Halsbury's Statutes 1147.

(n) Effect of the proviso to s. 70 (1) of the P.H.A., 1925.

(o) National Health Insurance Act, 1936, s. 79 (2); 29 Halsbury's Statutes 1112. See National Health Insurance (Approved Societies) Regulations, 1930 (S.R. & O., 1930, No. 523), Part XVII, para. 213.

(p) *Ibid.*, s. 92 (1) (b); *ibid.*, 1120. See National Health Insurance (Insurance Committees) Regulations, 1937, art. 35.

(q) Local Government Board Circular, March 28, 1908, printed on pp. 3626—3627 of Lumley's Public Health, 10th ed.

(r) 10 Halsbury's Statutes 708.

joint committee of quarter sessions and the county council (*s*) and not in the county council, whose function is limited to providing for the payment of expenditure incurred. [7]

Judicial Buildings.—Assize courts are provided in virtue of the County Buildings Acts, 1826–47 (*t*), by the county council, to whom the power was transferred by sect. 3 (iv.) of the L.G.A., 1888 (*u*) ; in boroughs by the corporation under the unrepealed portion of sect. 105 of the Municipal Corporations Act, 1882 (*c*) ; buildings for county courts are provided, where no building provided for other purposes is available for use by the county court, by the Commissioners of Works under sect. 34 of the County Courts Act, 1934 (*a*) : see also sect. 38 for the case where an existing building is available. Buildings for quarter sessions and petty sessions are provided in virtue of the County Buildings Acts, *supra*, the Petty Sessions Act, 1849 (*a*), and sect. 30 of the Summary Jurisdiction Act, 1879 (*b*), by county councils (*u*) or in virtue of sects. 105 and 160 of the Municipal Corporations Act, 1882 (*c*), by borough councils.

Buildings or courts especially provided for holding coroners' inquests are not contemplated by the statutes relating to those inquests, but in boroughs where the coroner's area of jurisdiction coincides with or is less extensive than the borough (*d*), coroners' courts have been provided in virtue of the general power in sect. 105 of the Act of 1882, just mentioned. The L.G.A., 1933, has, however, repealed the general words on which reliance was placed, without reproducing them in sect. 125, and it is not certain whether the power still exists. [8]

London. County Buildings.—The following provisions are applicable : County Buildings Acts, 1826, 1837 and 1847 (*e*) ; L.G.A., 1888, sect. 3 (iv.) (*f*) (transfer to county council of the administrative business of quarter sessions in respect of county halls, court buildings, etc., but by virtue of sect. 93 (metropolitan and city police) the reference in the section to police stations is inapplicable). (As to this, see below.) Sect. 64 of the L.G.A., 1888 (transfer of county properties and liabilities), and sect. 65 (*g*) (power to acquire lands and to acquire, hire, erect, and furnish halls, buildings and offices-) are also applicable. By virtue of sects. 30, 64 (3) of the Act of 1888 (*h*) the Standing Joint Committee are charged with matters in respect of accommodation for justices and with the determination of expenditure required. For powers of acquisition of land and other incidental matters in relation

(*s*) *Re Somerset County Council* (1889), 54 J. P. 182 ; 33 Digest 107, 719. See also 21 Halsbury (Halsbury's edn.), pp. 116–117, and Final Report of Royal Commission on Local Government, November, 1929, Cmd. 3436, s. XI. As to London, however, see *London County Standing Joint Committee v. L.C.C.* (1911), 75 J. P. 455 ; 33 Digest 108, 720.

(*t*) 10 Halsbury's Statutes 536–544.

(*u*) *Ibid.*, 689, now replaced by L.G.A., 1933, s. 125 ; 26 Halsbury's Statutes 372.

(*w*) 27 Halsbury's Statutes 107.

(*a*) 11 Halsbury's Statutes 291.

(*b*) *Ibid.*, 388.

(*c*) 10 Halsbury's Statutes 607, 628. Part of this section is repealed and replaced by s. 125 of the L.G.A., 1933, *supra*.

(*d*) See L.G.A., 1888, s. 34 (4) ; 10 Halsbury's Statutes 713.

(*e*) 10 Halsbury's Statutes 536, 541, 544.

(*f*) *Ibid.*, 689.

(*g*) *Ibid.*, 738, 739.

(*h*) *Ibid.*, 708, 736.

to the erection of the London County Hall, see County Office Site (London) Act, 1906 (i). [9]

City of London.—As to the Central Criminal Court (Old Bailey) and other public buildings in the City of London, see title CITY OF LONDON. As to transfer to the City Corporation of powers of quarter sessions, see sect. 41 of the L.G.A., 1888 (k). [10]

Metropolitan Police Courts, etc.—The property in police buildings is vested in the Receiver for the Metropolitan Police District (Metropolitan Police Courts Act, 1897) (l). [11]

Town Halls of Metropolitan Borough Councils.—Sect. 65 of the L.G.A., 1888 (m), is applied to metropolitan borough councils by the London Government Act, 1899, Sched. II., Part II. (n). Sect. 66 of the Metropolis Management Act, 1855 (o), as applied, provides (*inter alia*) that borough councils shall provide and maintain such offices within their area as may be necessary for the purposes of the Act. Under the L.C.C. (General Powers) Act, 1898, sect. 24 (p), borough councils may erect, adapt and alter buildings for public business and other purposes. By the Metropolitan Boroughs (Offices) Scheme, 1901, made under the London Government Act, 1899, the expression "business" in sect. 24 above-mentioned is to include any business transacted or to be transacted by the borough council and their committees and officers in the exercise or performance of any power or duty transferred to or conferred or imposed on them by or under the Act of 1899, or otherwise, and the expenses of acquiring land for the purposes of the erection and the expenses of fitting and furnishing such hall or other building may be raised and defrayed in the same manner as the expenses of the erection, provided that the section shall not apply to offices forming part of a building provided or to be provided for baths and washhouses, burial purposes or public libraries. Powers of compulsory acquisition of land for public buildings of borough councils have been sought from time to time in private Acts. [12]

Coroners' Courts.—Under the P.H. (London) Act, 1930 (q), sect. 238, the county council is to provide and maintain accommodation for the holding of inquests and may by agreement with sanitary authorities provide such accommodation in connection with mortuaries or other buildings belonging to such authorities. [13]

(i) 6 Edw. 7, c. lxxxvi.

(k) 10 Halsbury's Statutes 720.

(l) 11 Halsbury's Statutes 359.

(m) 10 Halsbury's Statutes 739.

(n) 11 Halsbury's Statutes 1243.

(o) *Ibid.*, 895.

(p) *Ibid.*, 1117.

(q) 26 Geo. 5 & 1 Edw. 8, c. 50.

OLD AGE PENSION COMMITTEES

	PAGE		PAGE
CONSTITUTION	7	MISCELLANEOUS	12
FUNCTIONS	8	LONDON	12
OFFICERS	10		

See also title : ORPHANS' PENSIONS.

Constitution.—The statutes establishing old age pension committees and regulating the allowance of non-contributory old age pensions have been consolidated in the Old Age Pensions Act, 1936 (a); which repealed the provisions in the Old Age Pensions Acts, 1908–24 (b), and sect. 1 of the Blind Persons Act, 1920 (c). References to sections in this title are, unless otherwise stated, to the Old Age Pensions Act, 1936. Widows', orphans' and old age contributory pensions, including old age pensions commencing at the age of seventy in succession to a contributory pension by virtue of the Widows', Orphans' and Old Age Contributory Pensions Act, 1936, sect. 11 (d), are not within the province of old age pension committees. The central authority under the Act is the Minister of Health (1936, sect. 10 (3)), and his principal function is the determination of appeals against decisions of local pension committees. The financial arrangements of committees are dealt with by the Accountant General of Customs and Excise under financial instructions issued by the Treasury. The appointment of pension officers is made by the Treasury (1936, sect. 10 (4)). In practice officers of customs and excise are appointed for this purpose.

[14]

A local pension committee is appointed for every borough and urban district, having a population according to the last published census for the time being of 20,000 or over, and for every county (excluding the foregoing boroughs and urban districts) by the council of the borough, district or county. The persons appointed need not be members of the appointing council (1936, sect. 10 (1)). A local pension committee may appoint sub-committees consisting either wholly or partly of members of the committee, and may delegate absolutely or conditionally to such sub-committees any powers and duties of the committee (1936, sect. 10 (2)). In counties and other large areas it is usual to appoint sub-committees for areas such as county districts or wards.

The constitution of local pension committees is governed by Reg. 21 of the Old Age Pensions Consolidated Regulations, 1922 (e), which are continued in operation by sect. 14 of the Act of 1936. Reg. 21 provides that (1) the number of members shall be not less than seven nor more

(a) 20 Halsbury's Statutes 1051.
 (c) *Ibid.*, 593.
 (e) S.R. & O., 1921, No. 2001.

(b) 20 Halsbury's Statutes 580–596.
 (d) 29 Halsbury's Statutes 1208.

than the number of the appointing council, as that council may determine; (2) the appointing council may make regulations as to the quorum, proceedings and place of meeting, but, subject thereto, the committee may determine these matters; the quorum may not be less than three; (3) the appointment of a member is for three years or such less term as the appointing council fix on appointment; a person ceasing to be a member of the committee may be re-appointed; a person who on appointment is a member of the appointing council ceases to be a member of the committee on ceasing to be a member of the council; a member may resign by giving notice to the clerk of the appointing council; and the appointing council may at any time remove a member and appoint another person in his place; absence from meetings for more than six months consecutively, except on account of illness or for some reason approved by the committee, renders the office vacant (a member whose office expires by effluxion of time continues in office until his successor is appointed); (4) vacancies are to be notified to the clerk of the appointing council by the clerk of the committee; (5) a committee must appoint a member as chairman who, provided he remains a member of the committee, holds office as chairman for such period, being not less than twelve months, as is specified in the resolution appointing him; (6) questions are determined by a majority of the members present and voting; the chairman has a second or casting vote; (7) proceedings of a committee are not invalidated by any vacancy in their number or by any defect in the appointment of any member. [15]

Reg. 24 applies the foregoing provisions to sub-committees, save that the committee is substituted for the appointing council and the sub-committee for the committee, and the number of members of the sub-committee is fixed by the committee at not less than five nor more than nine, unless a smaller or greater number is fixed by the Minister of Health in special circumstances. On the appointment of every sub-committee the committee must send to the Minister of Health and to every pension officer acting in the sub-committee's district, a notice of the appointment specifying the area for which the sub-committee is to act and the powers and duties delegated to it. The local pension committee is itself the pension authority (1986, sect. 10 (5)), and is under no obligation to report to or obey the directions of the appointing council, save in so far as the appointing council may make regulations as to proceedings. It is not entirely clear whether sects. 94, 95 of the L.G.A., 1933 (f) (which apply to committees and sub-committees the provisions of sects. 59, 76, *ibid.*, as to disqualification for membership and disability for voting) have any application to members of local pension committees and sub-committees, in that sects. 94, 95 speak of committees of a local authority, whereas a local pension committee, although appointed by a local authority, has an entirely independent existence. [16]

Functions.—The statutory functions of a local pensions committee are: (1) to consider and determine claims for old age pensions under the Act with reference to the fulfilment of the statutory conditions (1986, sect. 8 (1)); (2) to consider and determine the question whether the statutory conditions continue to be fulfilled by persons receiving pensions (1986, sect. 8 (1)); (3) to appoint a person to exercise on behalf of a claimant or pensioner, who is unable to act owing to mental

or other incapacity, any right to which he is entitled under the Old Age Pensions Acts, and to authorise such person to receive on behalf and for the benefit of the claimant or pensioner any sums payable by way of old age pension (1936, sect. 12 (1) (c), and Reg. 35 of the above-mentioned Consolidated Regulations).

In performing functions (1) and (2) the committee must consider the report of the pension officer, and obtain from him or from any other source, if necessary, any further information. Either the pension officer or any person aggrieved may appeal to the Minister of Health against a decision of the committee, and any claim or question in respect of which an appeal is brought then stands referred to the Minister of Health for a decision. The decision of the committee on any claim or question which is not referred to the Minister of Health, and the decision of the central authority on appeal, are final and conclusive (1936, sect. 8). The machinery for dealing with claims, questions and appeals is contained in the regulations of 1922.

The statutory conditions for receiving an old age pension are laid down in sect. 2 of the Act of 1936, and are : (1) the claimant must have reached the age of 70 (or 50 in the case of blind persons) (g); (2) he must have been a British subject for at least 10 years before drawing a pension; (3) subject to exceptions in special circumstances in favour of persons who have resided abroad, the claimant must have resided in the United Kingdom for at least 12 years in all since attaining the age of 50 in the case of a natural-born British subject (or the age of 30 in the case of blind persons), or for at least 20 years in all in the case of a naturalised British subject; (4) the yearly means of the claimant must not exceed £49 17s. 6d.; the rate of pension is related to means and the method of calculation is explained in a leaflet obtainable at most post offices. [17]

A person is disqualified for receiving an old age pension, if he is (i.) an inmate of a poor law institution—except for medical or surgical treatment; (ii.) detained in prison on a sentence of imprisonment without the option of a fine, or any greater punishment; or (iii.) maintained as a rate-aided person of unsound mind, or as a criminal lunatic, or is detained in any mental hospital. See title MENTAL DISORDERS AND MENTAL DEFICIENCY. Where a person of sixty years or upwards, having been convicted before any court, is liable to have a detention order made against him under the Inebriates Act, 1898 (h), the court may, although he is not necessarily disqualified, order that he shall be disqualified for a period not exceeding ten years (1936, sect. 3).

The procedure on a claim for an old age pension is governed by the above-mentioned Regulations of 1922, but owing to the scheme of contributory pensions, a composite form has now been compiled and all claims are now sent in the first instance to the M. of H., and all non-contributory cases are referred by that department to the appropriate pension officer for investigation. On completion of the investigation, the pension officer sends his report and the claim to the committee or sub-committee concerned. A meeting of the committee or sub-committee must be held to consider the claim within seven days of receipt of the papers from the pension officer, who may attend the

(g) A blind person is a person so blind as to be unable to perform any work for which eyesight is essential (1936, s. 2 (4)); arrangements have been made whereby local authorities and voluntary bodies maintaining registers of blind persons supply evidence of blindness to the pension officer.

(h) *9 Halsbury's Statutes 955.*

meeting and speak, but may not vote (Reg. 11); at least three clear days' notice of the meeting must be given to the pension officer (Reg. 12), and at least two clear days' notice must be given to the claimant unless the pension officer has reported that the claim can be allowed at the full rate; the committee has wide powers of adjournment and of directing further investigation, and on reaching a decision must give notice thereof to the pension officer and to the claimant (Regs. 14 and 15). Provisional allowance of a claim may be made where the committee is of opinion that the claimant will be entitled to a pension within four months (Reg. 16). Questions raised by the pensioner or by the pension officer are dealt with substantially in the same manner as claims (Reg. 17). Appeals against decisions may be made by any person aggrieved or by the pension officer within seven days after the date of the decision, or, where the appeal is by a person to whom notice is required to be sent, within seven days after the receipt of the notice; the Minister of Health may extend the time to fourteen days, if satisfied that an appeal within seven days was not reasonably practicable. On receipt of notice of appeal the committee must send forthwith to the Minister of Health (1) the notification of appeal, (2) the claim or statement of the question or application in respect of which the appeal is brought, (3) the report of the pension officer, (4) a statement of the decision of the committee, and a statement of the grounds thereof where they disagree with the report of the pension officer, (5) all other documents in the possession of the committee relating to the matter; where an appeal is brought by a person other than a claimant or pensioner, notice must be given to the claimant or pensioner, and notice must be given to the pension officer of any appeal not brought by him (Reg. 18). The decision of the Minister of Health on an appeal is sent to the committee and to the pension officer; the committee must inform the claimant or pensioner (and also the appellant where he is neither claimant, pensioner nor pension officer) of the decision (Reg. 19).

Provision is made by Reg. 20 for an application to the M. of H. by a person aggrieved by the refusal or neglect of a committee to determine a claim or consider a question; such applications are dealt with on similar lines to the appeals procedure.

An old age pension committee or sub-committee is entitled to use at all reasonable times and after reasonable notice, free of charge (except for charges approved by the Treasury for heating, lighting and cleaning), for the purposes of meetings any offices of any local authority situate in the area of the appointing council; the Minister of Health is to determine any question on this point. If no local authority offices are available and the committee cannot obtain a room free of charge, a room may be hired at a cost within the scale fixed by the Treasury (*i*); licensed premises or a club at which intoxicating liquor is supplied may not be used for meetings or for offices of the committee except with the sanction of the M. of H. (Reg. 22). [18]

Officers.—Every committee and sub-committee is required to appoint some fit person to be clerk; the office is held during the pleasure of the committee (*k*); the committee may assign to its clerk, and to the

(*i*) The cost may not exceed 10s. 6d., see Financial Instructions; the local authority's charge for heating, etc., is not to exceed 2s. 6d.

(*k*) An old age pension committee is not a local authority as defined by the L.G.A., 1933, and it is doubtful whether the fact that the committee is appointed by a local authority brings the clerk within ss. 121, 122, 123, *ibid.*

clerks of sub-committees, remuneration within the Treasury scale. This scale, which is contained in the Financial Instructions, 1928, is inclusive of out-of-pocket expenses such as clerical assistance and provision of offices (except for meetings), and is as follows :

	s. d.
(1) (a) Committees of counties (excluding the County of London) : For every 1,000 or part of 1,000 of the total population, according to the latest census, of the area served by the committee, per quarter -	2 6
(b) Committees of the County of London, county boroughs, boroughs and urban districts, per 1,000 of the total population as above, per quarter - - - - -	1 0

The foregoing fees are for general duties and it is for the committee to allocate them between the clerk and clerks of sub-committees.

	s. d.
(2) (a) For each claim, question or application dealt with in each quarter by a committee or sub-committee, not exceeding 20 in all - - - - -	5 0
(b) For each claim, etc., in excess of 20 - - - - -	2 6

Claims for both classes of fee are submitted quarterly to the Accountant General of Customs and Excise ; details as to the accounting arrangements and as to the classification of claims, etc., are contained in the Financial Instructions. Advances for incidental expenses may be made to clerks by the Accountant of Customs and Excise, but normally this is not necessary.

The clerk is required to keep a register of claims, etc., in the prescribed form and a record of the decisions of the committee (Reg. 23 (3)) ; a copy of a decision is authenticated by the signature of the clerk, and if purporting to be so signed is deemed to have been signed by him until the contrary is proved ; a duly authenticated copy of a decision must be supplied on demand to any person interested on payment of a fee of 6d. (Reg. 33). The clerk must, immediately on his appointment, notify his name and address to the M. of H. and to the Commissioners of Customs and Excise (Reg. 23 (4)).

A clerk of a county council who is appointed clerk to a local pension committee does not hold his appointment by reason of his office as clerk of the county council, and therefore the L.G.A., 1933, sect. 99 (2), does not apply, and in his case, as in the case of other local government officers holding clerkships to local pension committees, an understanding should be reached between the local authority and the officer as to the retention, or otherwise, of fees, and as to offices, staff and incidental expenses payable out of the fees.

Pension officers are not officers of the local pension committee and there is no statutory authority for the appointment by the committee of any officer but the clerk ; in practice, the Accountant-General will accept, for accounting purposes, the signature of a deputy clerk, in the absence of the clerk, provided that the deputy is authorised by a resolution of the committee.

There is no power to pay travelling expenses of the clerk, and it is doubtful whether the L.G.A., 1933, sect. 294, authorises payment of travelling expenses of members of a local pension committee appointed by a county council ; also, the committee cannot pay any expenses incurred by claimants in preparing claims or attending before the committee. [19]

Miscellaneous.—The Consolidated Regulations, 1922, contain a number of miscellaneous provisions of importance. Reg. 25 empowers a committee to have regard to any evidence or information which, in the opinion of the committee, is sufficient and is the best evidence or information which it is reasonably possible to obtain; *e.g.* in some cases the age of a claimant cannot be proved by reference to the statutory registers of births, and it may be necessary to rely on baptismal registers, entries in family bibles, or other documents of a reasonably reliable character.

Reg. 26 preserves from invalidity any decision of a committee where the times, within which steps are to be taken or notices given, have not been observed.

Reg. 28 provides for the return to the pension officer of claims, questions or applications, with all papers relating thereto, when the decision thereon of the committee has been given.

The issue of pension books and the payment of pensions is not a matter for local pension committees (*vide* Regs. 29, 30), and the recovery of overpaid pensions is also outside the functions of committees (Reg. 34).

The appointment of a person to act on behalf of a claimant or pensioner under incapacity (1936, sect. 12 (1) (c)) is governed by Reg. 35, which provides that application may be made to the local pension committee where no committee or quasi-committee of the person's estate has been appointed; the committee must satisfy themselves that the person proposed is a fit and proper person, and is willing to act; no member, officer or servant of the local pension committee nor person under eighteen years of age may be appointed, and the committee may in their absolute discretion revoke the appointment at any time; the person appointed may resign on giving one month's notice to the committee. The person appointed may take any action in relation to an old age pension which the person under incapacity could have taken; the like powers are vested in a committee or quasi-committee of the estate. Appointments can only be made on written application, and the clerk of the committee must give notice to the pension officer of appointments, revocations of appointment and resignations. [20]

London.—The statutory position as regards London does not differ. The only Old Age Pensions Committee in the county is appointed by the L.C.C. There are fourteen district sub-committees, each area consisting of from one to three metropolitan boroughs. [21]

OMNIBUSES OF LOCAL AUTHORITIES

PAGE	PAGE		
INTRODUCTORY - - - - -	13	POWERS TO PROVIDE NECESSARY VEHICLES, EQUIPMENT AND	
POWERS OF A LOCAL AUTHORITY TO OPERATE OMNIBUSES PRIOR TO 1930 - - - - -	14	LAND - - - - -	23
THE ROAD TRAFFIC ACT, 1930 : THE GENERAL POSITION - - - - -	15	EXPENSES AND BORROWING - - - - -	23
POWERS TO RUN PUBLIC SERVICE VEHICLES - - - - -	16	WAGES AND CONDITIONS OF EMPLOYMENT - - - - -	25
POWERS OF A LOCAL AUTHORITY TO ENTER INTO WORKING AND OTHER AGREEMENTS - - - - -	17	FARES - - - - -	25
CO-ORDINATED AGREEMENTS FOR INTER-OPERATION OF SERVICES - - - - -	18	APPLICATION OF PROFITS - - - - -	26
CO-ORDINATED AGREEMENTS WITH-OUT INTER-OPERATION - - - - -	19	WEAR AND TEAR ALLOWANCE FOR INCOME TAX PURPOSES - - - - -	26
PROTECTION OF LOCAL AUTHORITIES' TRANSPORT SERVICES - - - - -	19	STATISTICS - - - - -	27
JOINT BOARDS AND JOINT COMMITTEES - - - - -	22	STATISTICAL RETURNS - - - - -	27
		ACCOUNTS - - - - -	27
		EXEMPTION FROM INSURANCE - - - - -	27
		STOPPING PLACES, STOPPING POINTS AND STANDS - - - - -	27
		LONDON - - - - -	28

See also titles :

HACKNEY CARRIAGES AND OMNIBUSES;
LONDON ROADS AND TRAFFIC;
PARKING PLACES;
PUBLIC SERVICE VEHICLES;
ROAD TRAFFIC;

TRADING REVENUE AND FINANCE;
TRAFFIC COMMISSIONERS;
TRAMWAYS;
TRANSPORT, MINISTRY OF.

Introductory.—As recently as 1930, the lack of method in licensing and regulating omnibuses was responsible for chaotic conditions in the road transport industry and the position of a local authority operating transport was both uncertain and unsatisfactory. The licensing laws had been designed for horse-drawn vehicles, which are naturally local in their operation, but the development of the motor omnibus resulted in that vehicle becoming the most important passenger unit on the road, capable of maintaining long-distance services which ignored geographical and administrative boundaries. The operating area bore little relation to the relatively small areas of existing licensing authorities who had little interest in long-distance or inter-urban traffic. A local authority was often both a licensing and an operating authority and sometimes the lessor of a tramway system, and it was considered undesirable for a local authority to be interested in an undertaking which might be in rivalry with an applicant for licences, or which might affect its tramways system. [22]

The control of public service vehicles was exercised under the Town Police Clauses Acts, 1847 and 1889 (a), and local Acts. The number

of licensing authorities in Great Britain in 1930 amounted to 1,345, but there were many rural parts of the country without any such authority.

The expression "standing or plying for hire," one of the statutory terms, proved difficult to define; and evasion of the regulations on one pretext or another was rife. The penalty for plying for hire without a licence was inadequate, and it was often profitable for a private operator to run unlicensed vehicles, as the profits more than balanced the fines. Licences were granted frequently with little thought of wasteful competition or the congestion that would arise in other areas, and private operators were able, therefore, to obtain licences in one area and operate into another on what was called the return ticket basis. This type of operator naturally chose the remunerative routes, thereby reducing the ability of the regular operators to supply services on unremunerative routes, and in many cases seriously imperilled the financial stability of the local authority's transport undertaking. "Racing" and "cutting-in" were practised, causing an increase in the traffic dangers, while a further risk of accidents was caused by inadequate inspection of the vehicles. Standards of fitness of vehicles often varied from district to district. A vehicle which conformed with the conditions of fitness prescribed in one district would be refused a certificate of fitness in another. Conditions of fitness were insisted on in some districts only, and some classes of vehicles thereby escaped control. There was little co-ordinated control of traffic on an area basis except that exercised in a few localities by joint committees representing small groups of local authorities. [23]

Powers of a Local Authority to Operate Omnibuses Prior to 1930.—In order to obtain powers to purchase and operate omnibuses it was necessary for a local authority, up to 1930, to proceed by means of a special Act or order. A local authority was at a disadvantage as compared with private companies and individuals, as in following this procedure it was subjected to the maximum of publicity, cost and delay, while private undertakers could commence omnibus services at practically no cost and without any delay.

In 1926, the Municipal Tramways and Transport Association (Incorporated) prepared an "Omnibus Bill" which was introduced into the House of Commons as a Private Member's Bill. Clause 1 (1) of that Bill provided as follows :

"A local authority if authorised by an order of the Minister under this Act, may provide and maintain (but shall not manufacture) omnibuses and may run the same within their district and may also run the same without their district along any road which is an extension of or in connection with any tramway, trolley vehicle route or omnibus route, for the time being owned, run over or worked by the local authority :

"Provided that a local authority shall not under the powers of this Act run omnibuses along any road without their district unless either :

- (a) the road is specified in the order as a road along which omnibuses may run thereunder ; or
- (b) the consent of the Minister is given to the running of omnibuses along such road ;

and the running of omnibuses along such road shall not be authorised except with the consent of the council of the borough or district in which the road is situate, but the consent of such council shall not be withheld unreasonably, and shall not be necessary if in the opinion of the Minister it is withheld unreasonably."

The Bill was defeated upon second reading. It was re-introduced in 1927, 1928 and 1929. In 1930 it was read a second time, and afterwards, in a modified form, was merged in the Road Traffic Bill of the Government, and was included in the Road Traffic Act, 1930, as Part V. (b). [24]

In 1928, the Government appointed a Royal Commission with the following terms of reference :

"To take into consideration the problems arising out of the growth of road traffic and with a view to securing the employment of the available means of transport in Great Britain (including transport by sea, coastwise and by ferries) to the greatest public advantage, to consider and report what measures, if any, should be adopted for their better regulation and control, and, so far as is desirable in the public interest, to promote their co-ordinated working and development."

It was upon the reports of that commission that the Road Traffic Bill of 1930 was founded. The first one (c) dealt with the free and easy movement of traffic on the roads and its control, mainly from the point of view of safety ; the second (d) with the licensing of public service vehicles, and the co-ordination of the various forms of road passenger transport with the object of obtaining the best and most economical public service ; the third report (e) dealt with the general co-ordination and development of all available means of transport.

In the first memorandum submitted by the M. of T. to the Royal Commission on November 14, 1928, it was pointed out that

"Parliament has conceded the principle that the provision and running of omnibuses is, within limits, a legitimate form of municipal enterprise, and local authorities do not normally experience any difficulty in obtaining from Parliament the necessary powers to enable them to operate omnibuses within their respective areas."

A local authority, however, did not find it easy to obtain powers to operate *outside* its area. The corporations of both Morecambe and Lancaster had been expressly prohibited from doing so (f), but these were exceptions and running powers were usually obtained on specified routes or within a specified area. The extent of the transport areas of local authorities differed very considerably, and many local Acts specified the limits in terms of a radius from the municipal centre or from the municipal boundary. [25]

The Road Traffic Act, 1930 : The General Position.—It will be seen from this brief review that the whole position of road transport required clarifying, and in 1930 the Road Traffic Act was passed, an Act which, *inter alia*, placed the licensing and regulation of motor omnibuses upon a uniform basis. It displaced all previous licensing authorities, and divided the country into thirteen (g) traffic areas, each of which was administered by Traffic Commissioners. The metropolitan area has one commissioner only, with the same powers and duties as the commissioners in the other areas. Part V. of the Act placed the local

(b) 23 Halsbury's Statutes 678.

(c) Entitled "The Control of Traffic on Roads," and dated July, 1929 (Cmd. 3365).

(d) Entitled "The Licensing and Regulation of Public Service Vehicles," dated October, 1929 (Cmd. 3416).

(e) Entitled "The Co-ordination and Development of Transport," dated December, 1930 (Cmd. 3741).

(f) These prohibitions have since been revoked.

(g) Road and Rail Traffic Act, 1928, s. 27 (26 Halsbury's Statutes 892, 912) ; Southern area abolished and partitioned amongst its neighbouring areas.

authorities in a position of equality but not of preference in promoting an omnibus undertaking. [26]

Powers to run Public Service Vehicles.—Sect. 101 of the Road Traffic Act, 1930 (*h*), removed the limitations which had for so long cramped municipal operations. In accordance with this section a local authority (*i*) which under any local Act or order is operating a transport undertaking (tramway, light railway, trolley vehicle or omnibus) (*k*) may, as part of that undertaking, operate public service vehicles (*l*) on any road within their district (*l*), and also, with the consent of the Traffic Commissioners for the appropriate area, on roads outside their district.

This section does not, however, authorise a local authority to run any public service vehicle :

- (1) As a contract carriage (*m*) ; or
- (2) On any road on which they are for the time being prohibited by any local Act or order from running omnibuses (*n*) ; or
- (3) Except with the consent of the authority, on any road vested in a statutory dock authority as such, or in a statutory harbour authority as such ; or
- (4) Except with the consent of the company, on any premises not being part of a highway belonging to a railway company and adjoining or giving access to a railway station. [27]

It will be noted that before a local authority can avail itself of the provisions of the section, it must be already operating a transport undertaking of the kind prescribed in the section. The mere possession of powers is of itself insufficient to have the effect of applying the provisions of the section to the local authority. The authority must actually operate its undertaking. *A fortiori*, if the local authority has no powers, it must obtain them (under a local Act) and operate, before the provisions of the section apply to its undertaking.

The powers conferred on a local authority under Part V. of the Act are not in derogation of any powers contained in any private Act

(*h*) 23 Halsbury's Statutes 678.

(*i*) Local authority for purposes of Part V. also includes any joint board or joint committee which is so constituted as to include amongst its members representatives of the council of a county borough or county district (*ibid.*, s. 108 (1); 23 Halsbury's Statutes 682).

(*k*) For definition, see s. 121; 23 Halsbury's Statutes 686.

(*l*) District of joint board or joint committee; see the Road Traffic Act, 1930, s. 108 (1); 23 Halsbury's Statutes 682.

(*m*) It is to be noted that this does not affect any powers to operate contract carriages which a local authority may have under its own private Act or order. There are, however, only a very limited number of local authorities which have such powers and this restriction of the operation of local authorities places them at some disadvantage, for if they were allowed to operate contract carriages they would be able to put vehicles to the fullest use. Reserve vehicles which are used to augment the service at rush periods might be usefully employed through the remaining period of the day or night as contract carriages for the conveyance of private parties instead of having to lie idle in the garage.

(*n*) A local authority, which is prohibited by a local Act or order, desiring to operate on a road which is the subject of such prohibition, will first of all have to obtain an order from the M. of T. modifying or revoking the prohibition (see s. 91) before proceeding under this section for the consent, in which case the Minister, before granting such an order, is to hold a public enquiry, at which all interested parties are given the opportunity of being present. Such an order must also be approved by both Houses of Parliament. When the restriction or prohibition is removed, the local authority then proceeds under this section for consent.

or Order, but are superimposed on such powers (o). Furthermore, such powers obtained under Part V. are subject to the provisions contained in Part IV. (p); therefore, it is still necessary for a local authority having obtained consent to operate, to obtain a road service licence to authorise operations on each particular route. In some instances the Traffic Commissioners have given consent to a local authority to operate public service vehicles and have refused a road service licence when the necessary application for such a licence has afterwards been made in the normal way under sect. 72. In such cases it would appear that the commissioners have given consent in order that the local authority may be in the position to negotiate with other operators, municipal or otherwise, with regard to through running and the operating road service licence has been withheld pending working arrangements for joint through running being made. [28]

The procedure for obtaining consent to operate outside the local authority's district is simple. Formal application is made to the area commissioners, describing the roads on which it is desired to operate, and a notice is published in the *London Gazette* and in such newspapers as the commissioners direct (q). The commissioners may, if they so desire, decide an application without holding a public inquiry if no authorised objection (r) is received, but, in the event of such an objection being lodged, full inquiry must be held and not less than fourteen days' notice of the holding of the inquiry given by the commissioners to the local authority and authorised objectors (r). In considering the application, the commissioners are directed to have regard to the extent to which the requirements of the applicants' district will be served, either directly or indirectly, by a service of vehicles on the route to which the application relates. A consent may either be revoked or modified at any time by the commissioners, but before doing so an opportunity to be heard must be given to the local authority or authorised objectors (r). A decision of the commissioners to grant any consent does not become operative until after the expiration of one month, and a decision to revoke or modify a consent does not become operative until after the expiration of three months from the decision, or, in the case of appeal, until the appeal is determined (s). [29]

Powers of a Local Authority to Enter into Working and other Agreements.—The powers of a local authority to make and carry into effect agreements to obtain co-ordination of road passenger transport are governed by sect. 105 of the Act, which is similar to the model clause included in many local Acts. Sub-sect. (1) of this section deals with working agreements for the maintenance, etc. (t) of services between one local authority and another local authority and is confined

(o) S. 122; 23 Halsbury's Statutes 687.

(p) S. 108 (2); *ibid.*, 682.

(q) S. 102 (1); *ibid.*, 678.

(r) *Authorised objections* may be made to the commissioners by any other local authority, by the council of any county, or by any person who already provides transport facilities on or in the neighbourhood of any part of the route. The section lays down fourteen days as a minimum in which the objection is to be made (s. 102). There is not, however, any stipulation as to the manner in which objection is to be made.

(s) S. 102 (7); 23 Halsbury's Statutes 679.

(t) Road Traffic Act, 1920, s. 105 (3). Agreements made under s. 105 (1) and (2) (23 Halsbury's Statutes 680) may make provision for through running and for the use of equipment (including staff).

to (a) a service which any party to the agreement is authorised (*u*) to run ; and (b) local authorities in adjoining districts or local authorities authorised (*u*) to run vehicles in adjoining districts, that is to say, that although the boundaries of local authority A are not adjacent to those of local authority B, if A is authorised (*u*) to operate in a district adjacent to the district in which B is authorised to operate, the two authorities are empowered under this section to enter into agreements in respect of the maintenance of services which either authority A or B is authorised (*u*) to run. It is to be noted that this subsection is confined to agreements between local authorities only and deals with the through running of vehicles, and that the unlimited extension of the area of operation of a local authority is prevented by limiting the making of agreements in respect of two adjacent authorities' authorised (*u*) transport areas. [30]

Similar working agreements between a local authority authorised to run public service vehicles and any other person not being a local authority are permissible under sub-sect. (2), but such agreements are restricted to operation "in the district of the local authority or in any district on any road in which the authority is for the time being authorised (*u*) to run any such vehicles." [31]

An alternative to through running, however, is provided for under sect. 105 (4), which regulates the making and carrying into effect of agreements with any other operators for the interchange of traffic without the necessity of through running of vehicles. A local authority could, apparently, under this section act as a booking agent, and could book passengers to any destination, convey them to the boundary of their area or into any adjacent area into which they were empowered to go, and there transfer passengers to another operator with whom agreements had been made. This section does not appear to have been used by local authorities. [32]

Co-ordinated Agreements for Inter-operation of Services.—Where the transport areas of two or more operators are contiguous and there is a community of interest between them, it is in the public interest to arrange for inter-running of vehicles on a mutually satisfactory basis. With the control of licensing now in the hands of the commissioners, it is the definite policy to encourage through running of services and also to avoid wasteful competition. Agreements entered into with neighbouring transport authorities for inter-operation and co-ordination of services are, generally speaking, of two kinds, namely : (1) on a "pooling" basis, in which case the revenue of the whole route is pooled and divided *pro rata* to the route mileage in each operator's area ; and (2) on a "ticket" basis, in which case conductors are supplied with separate sets of tickets belonging to each undertaking for issue according to the section traversed, so that a passenger travelling over part or the whole of both sections of the route receives two or more tickets each appropriate to the section and the undertaking concerned. In this way the receipts due to each undertaking can readily be determined from the tickets issued. This method overcomes any difficulty arising from variation in the density of the traffic. No matter how heavy the traffic may be in any one operator's part of the joint route,

(*u*) Road Traffic Act, 1930, s. 105 (6). For the purposes of s. 105, the expression "authorised" means authorised otherwise than by virtue of an agreement under that section.

and how light in the other, the tickets issued correspond to the different densities of traffic and the receipts are divided accordingly. [33]

In both cases it is usually arranged that the mileage run should be in proportion to the route mileage in each operator's area, and any excess mileage run by an operator is either run off later or paid for at an agreed rate. The "pooling" basis is the simpler method, particularly if there are more than two operators on a route. On the other hand, one portion of the route may be more lucrative than another and, furthermore, the pool may be adversely affected by the addition of short services; or, again, picking up may be limited more in one area than another. The "ticket" basis results in a more equitable division of the receipts, but difficulties arise where several operators are co-ordinating, or where a portion of the route is jointly owned, owing to the introduction of different classes of tickets. The receipts from return tickets may also be apportioned either on a "pooling" or on a "ticket" basis. [34]

Co-ordinated Agreements without Inter-operation.—Where a local authority cannot join in the operation of a co-ordinated service, the agreement usually provides for :

- (1) the local authority to receive the whole of the receipts from its area, including a proportion from through tickets, in which case the local authority pays the operator's working expenses in respect of mileage run in its area on an agreed basis; or
- (2) the local authority to receive a capitation fee in respect of all passengers both picked up and set down in its area, in which case the operator pays his own working expenses (x). [35]

Protection of Local Authorities' Transport Services.—One of the most important questions with respect to licensing is the extent to which an efficient road transport undertaking, providing adequate local services, whether municipally or privately owned, is entitled in the public interest to protection from the competition of other undertakings whose function is the provision of long-distance through services; and the form which that protection should take. Where there is no adequate protection, essential local services may be unable to be economically maintained. Examples have been experienced of this through the absorption or merging of purely local services. The operators taking over these "pavement" services, and catering for the districts through the medium of their longer distance services, cannot provide the differing public facilities required on various parts of the routes nor adjust their services to meet varying local needs.

The Minister of Transport, in forwarding his decision (September, 1931) upon an appeal against protection granted by the East Midland Traffic Area Commissioners to Leicester corporation against competing services operating within 440 yards of any point on any road traversed or used by the services of any local authorities in that area, said :

"It appears to the Minister that the circumstances of individual services differ so widely that it is not desirable or even practicable for him to formulate any rules or conditions that could be of universal application. It is clearly a matter for the Traffic Commissioners in the first place to consider

(x) The local authority generally requires from 25 per cent. to 75 per cent. of the fare charged, as its service has been established primarily to cater for this local traffic. The operator of the long-distance service is usually willing to agree to terms on this basis as he has presumably covered his costs and made his profit with the receipts from the passengers he primarily intended to serve.

each case on its merits, and to arrive at the decision which appears to them proper in the particular circumstances." [36]

On the general question of protection, the Minister stated the following conclusions :

(1) "A well organised and properly co-ordinated system of road transport which serves all the local needs of the community, which provides services on unremunerative as well as on remunerative routes, may, as contemplated by the Act, in certain circumstances and consistently with the public interest, be entitled to some form of protection from competition on the part of services which extend outside the area served by the local system. The existence of tramway or trolley vehicle services, which may be rendered unremunerative by unrestricted competition on the part of omnibuses, is one of the considerations which will in many cases need to be taken into account.

(2) "Should some degree of protection for a local service, or system of services, be justified, the form which that protection should take must be considered in relation to the circumstances of each individual case. No formula can be devised which would be universally applicable. Where some form of protection is considered necessary it can usually take one or other of two forms : (a) protective fares, i.e. fares higher, stage by stage, than those on the service to be protected, or a minimum fare for a certain distance or area ; (b) prohibition of both picking up and setting down the same passenger or passengers along a certain route or within a certain area. There are no doubt cases where the second of these two alternatives provides the only or the most effective remedy. On the other hand, the first alternative, generally speaking, is the easier of application and enforcement and is less likely to cause inconvenience to the travelling public.

(3) "As regards the condition relating to the prohibition of both picking up and setting down within a certain area imposed in Leicester and in other towns in the East Midland Area, it is desirable that the Traffic Commissioners should carefully watch its operation in order to review the position when applications for road service licences are next before them. In particular they should take into consideration any information tending to show whether or not the prescription of a uniform distance so great as 440 yards (*infra*) may not in certain cases have imposed undue hardship on the travelling public.

"The Minister recognises that the problem is one which calls for careful handling, and until further experience has been gained of alternative lines of solution considers that the issue by him of any general directions to the Traffic Commissioners would be premature." [37]

The following is a typical protective clause :

"Protection is to be given to the corporation tramways (*a*) and/or omnibus services to the extent that (except by agreement) no passenger is on any one journey both taken up and set down on a route in competition with such corporation services. This protection is to extend to a point beyond the existing tramways or omnibus termini which the commissioners may regard as being reasonable and effective to afford adequate protection, in no case, however, to exceed a distance of a quarter of a mile beyond such termini (*supra*)."¹³ [38]

Two alternative methods for protecting local services against competition by long-distance stage or express services operating on the same route have been adopted (1) by protective fare ; and (2) by prohibition. To render the latter method more effective the sphere of protection has

(*a*) The question whether, on the discontinuance of a tramway service to which protection had been given in the past, similar protection should be continued in favour of the bus service over the routes concerned, was the main point of issue in the appeal of the Halifax Corporation, Yorkshire W.D., Electric Tramways, Hebble Motor Services, Ltd., November 1, 1932, Yorkshire Area, and the Minister decided that bus services in substitution of the tramway services should be protected over the whole length of the tramway route.

sometimes been extended to points 440 yards or more from the route. Generally speaking the existing protection has been continued in cases of local omnibus services operated by municipalities, but in some instances modification has been made by the Traffic Commissioners either by a reduction in the minimum fare or a slight increase with the withdrawal of prohibition against picking up and setting down the same passenger between specified points.

One disadvantage of protection by increased fares is that, should the fare be not high enough to become prohibitive, the operator giving protection carries traffic to which he is not entitled, and in addition receives extra remuneration for so doing. At the same time the West Midland Area Commissioners (b) from the beginning appear to have favoured protective fares rather than prohibition of taking up and setting down passengers in competition with the undertaking to be protected. The commissioners state that one of the objects aimed at is to permit an alternative form of transit to those who are prepared to pay accordingly for a greater speed or for other increased convenience.

Where the services are not wholly dissimilar, however, the tendency is for the commissioners throughout the country to attempt to obtain agreement between the parties for joint operation and the receipts either pooled or allocated on an equitable basis. By this means a high protective fare which operates harshly against the travelling public is rendered unnecessary and waste seats are eliminated while all services so operated are available for the use of the public. In the annual report of the Traffic Commissioners for the year 1932-34 (North Western Traffic Area) it is said that "the protective conditions obtaining have been found in practice to form a sound basis for the framing of such agreements." [39]

If an agreement is arranged, it is usual for the local authority to insist on the apportionment of the receipts being on a ticket basis. It may be helpful to give briefly the heads for a suitable agreement with such an operator (referred to as "the company").

- (1) The company to issue tickets in the local authority's area, provided by and in accordance with the fares and stages prescribed by the local authority, and to account for the receipts to the local authority. (The receipts from through tickets issued from stages within the company's area to any stage in the local authority's area are apportioned on an agreed basis (usually according to the length of the route in the respective areas).
- (2) The company to furnish weekly returns giving full particulars regarding the vehicles operated on the service, (a) receipts, (b) bus miles run, (c) passengers carried and operating expenses per bus mile.
- (3) The apportionment of the bus miles to be operated (usually according to the length of the route in the respective areas).
- (4) Detailed particulars of the operating expenses of the company to be furnished under the various heads of expenditure in a similar manner as shown in the accounts of a local authority where such expenditure has been actually incurred. (Usually facilities are to be afforded to the officers of the local authority to verify the figures supplied by and shown in the books of the private operator.)

(b) 1st Annual Report of the Traffic Commissioners, 1931-32, p. 39.

- (5) Operating expenses of the company to be charged to the local authority, based upon the mileage run by them in the local authority's area at the cost per bus mile incurred by the company as agreed between the parties. (See Clause 4.)
- (6) Payments by or due to the company to be made every four weeks, subject to a financial adjustment on the ascertainment of the actual operating expenses of the company at the close of the financial year.
- (7) The frequency of the service to be provided, and details of the number of buses to be operated by the company (usually with the condition that no extra mileage be run or curtailment of service be made in the local authority's area without the approval of the local authority). [40]

Joint Boards and Joint Committees.—There is an increasing tendency in the road transport industry for combination of services over areas wider than those possible for operators acting independently of one another. A modern feature of urban traffic problems which has emphasised the need for joint working is the creation of housing estates at the outskirts or beyond the boundary of the transport area of a local authority. Where the geographical lay-out is suitable, combinations of transport authorities facilitate through services, relieve traffic congestion by the avoidance of duplicate services and duplicate rolling stock, and obtain more economical working with a probable reduction in fares in consequence.

Combinations of local authorities consist of either joint committees or joint boards. [41]

A *joint committee* is not a separate entity and does not have the full powers of a joint board to borrow money, etc.; the necessity is thereby avoided of having to obtain a local Act while the respective parties are not permanently bound to a scheme which may be of an experimental nature. Sect. 91 of the L.G.A., 1933 (c), gives powers to local authorities to form a joint committee for any purpose.

In the case of one joint committee of local authorities the receipts are applied in the following order: maintaining vehicles and equipment; paying all working expenses; making interest and sinking fund payments on the outstanding debts of the respective corporations; providing a reserve fund (not exceeding 10 per cent. of the surplus in each year), and the remaining surplus to be apportioned to the respective parties. Joint committees have been formed between local authorities and the railway companies as a result of the latter obtaining powers to operate passenger road service vehicles by the 1928 Acts (d). By agreement, the services are classified according to whether they are entirely within or partly within and partly without the area of the local authority, the former being entirely controlled by the local authority, while the latter, if terminating a short distance beyond the boundary, are controlled by joint committees of representatives of the local authority and the railway companies on terms mutually arranged. The long-distance bus services running into the area are controlled by the railway companies only. Agreements with local authorities and company operators have been reached for the fusion of transport interest in various areas. By arrangement, the transport system of the local authority is managed

(c) 26 Halsbury's Statutes 855.

(d) The Acts referred to are the local Acts of the various railway companies for 1928.

and operated by a company. A joint committee is set up and the profits are divided by agreement.

A special type of agreement has been arranged by the corporation of Belfast and several operators in the district including the railways, under which the local authority purchases empty seats for local traffic on the long-distance buses operating in and out of the city. [42]

A joint board is a body corporate established by local Act. The board would take over the existing liabilities and assets upon terms to be arranged in one of several ways and would become constituted so as to be self-supporting and independent. Representatives of the local authorities and others affected would comprise the board. Instead of there being several authorities each having separate reserves of rolling stock, separate emergency staffs, separate workshops and separate administrative staffs, by the creation of a joint board there is a single consolidated control. [43]

Powers to Provide Necessary Vehicles, Equipment and Land.—Sect. 103 of the Road Traffic Act, 1930, which is similar to the model clause contained in recent private Acts, authorises a local authority to purchase and maintain such vehicles as may be necessary, and to purchase or lease lands on which buildings may be erected and also to provide plant and equipment for the repair, maintenance and running of vehicles (e). This section only gives the power to "purchase" and "maintain" and quite definitely does not authorise "manufacture." The model clause covering this point in some private Acts prior to the Road Traffic Act entitled a local authority to "provide" omnibuses, but added express prohibition with regard to "manufacture." Some local authorities who were not subject to this express prohibition and whose Acts stated that they were to be allowed to "provide" buses, were inclined to the view that the word "provide" included "manufacture," but the risk of a financial loss consequent upon an adverse decision in the courts deterred them from pursuing the matter. Glasgow corporation were expressly prohibited from manufacturing omnibuses, and in 1927 they promoted an order in which they included a clause to remove this prohibition, but this was deleted at the inquiry into the order. In 1930 they included in a Bill a clause which authorised them to manufacture bus bodies only. The select committee of the House of Commons, to whom the Bill was referred, passed the clause, but it was rejected by the committee of the House of Lords when the Bill came before them. A number of local authorities build bodies to be placed on chassis previously purchased as complete units. Apart from the legal aspect of this question, there is the further point that it is doubtful whether it would be profitable for a local authority to manufacture its own vehicles, particularly the chassis and engines, having in view the limited number of vehicles which would be required and the constant changes which are taking place in the design and structure. [44]

Expenses and Borrowing.—By sects. 185 and 188 of the L.G.A., 1933 (f), the expenses of a borough or U.D.C. under Part V. of the Road Traffic Act, 1930, are to be defrayed out of the general rate fund, and by sect. 190 of the former Act, the expenses of a R.D.C. are deemed to be general expenses. By the Road Traffic Act, 1930, the expenses of

(e) 28 Halsbury's Statutes 679.

(f) 26 Halsbury's Statutes 407, 408.

a joint board or committee shall be defrayed in the same manner as the general expenses of the board or committee (g). [45]

The Eleventh Schedule to the L.G.A., 1933 (h), repealed the power to borrow contained in sect. 107 (2) of the Road Traffic Act, 1930, so far as the councils of county boroughs and county districts are concerned, and they now borrow under sect. 195 of the L.G.A., 1933. Sect. 107 (2) of the 1930 Act still applies to joint boards and committees, and authorises them to borrow, for the purposes of Part V. of the Road Traffic Act, as for the purposes of their other powers and duties. In all cases, the power to borrow is subject to the consent of the Minister.

The Minister in giving his consent to any borrowing by a joint board or joint committee (i), prescribes the period for repayment and may attach conditions regarding the application of revenue, the formation of a reserve fund or sinking fund, the investment of moneys representing any such fund, and the keeping of accounts.

It is the general practice of the Minister to require a local authority to consider various types of vehicles and to arrange for frequent comparative trials and tests of suitability and performance before selecting a particular type of vehicle. The Minister does not in all circumstances require a local authority to accept the lowest tender without regard to questions of value or general suitability for the purpose for which they are required. At the same time the Minister is disinclined to sanction the borrowing of sums in excess of the lowest tenders without good reasons for so doing. [46]

The period of repayment of any sum borrowed by a local authority under or in pursuance of sect. 107 of the 1930 Act, which must be read with sect. 108 and the Eighth Schedule of the L.G.A., 1933 (k), is specified in the Public Service Vehicles (Local Authorities' Loans) Provisional Regulations, 1932, dated February 25, 1932, made by the Minister of Transport, which provide :

Nature of Property.	Period of Repayment.
1. Public service vehicles	— — — — —
2. Land (freehold)	— — — — —
,, (leasehold)	— — — — —
3. Buildings constructed mainly of stone, concrete or brick, including steel frame buildings panelled with these materials	— — — — —
4. Buildings constructed mainly of wood and steel and steel frame buildings panelled with corrugated iron or similar materials	— — — — —
5. Machinery and other plant	— — — — —
	8 years. 60 years. The unexpired period of the lease or 60 years, whichever is the less.
	30 years.
	20 years. 15 years.

Any outstanding debt on the vehicles to be replaced must be liquidated during the current financial year of the sanction to the loan.

The Minister also requires that prior to giving sanction to a loan the use of the vehicles proposed by the local authority is to be sanctioned by road service licence held by them. In some cases this has entailed

(g) S. 107 (1.) (b); 28 Halsbury's Statutes 681.

(h) 26 Halsbury's Statutes 538.

(i) Road Traffic Act, 1930, s. 107 (3); 28 Halsbury's Statutes 681.

(k) 28 Halsbury's Statutes 681; 26 Halbury's Statutes 414, 510.

delay, but the Minister has declared that he is not prepared to issue a formal loan sanction subject to conditions which may subsequently be unfulfilled, thus rendering the sanction invalid, the effect being that a local authority would have borrowed money without sanction and would not be in a position either to repay the loan or to pay interest thereon. Further, the Minister's sanction of a loan is not to be used in support of an application for obtaining licences. In certain cases the purchase of vehicles has been effected by the employment of revenue accumulations when the local powers of the authority permit.

[47]

Wages and Conditions of Employment.—The holder of a road service licence operating public service vehicles is subject to the provisions of sect. 93 of the Road Traffic Act, 1930 (*l*), as amended and extended by sect. 92 of the Road and Rail Traffic Act, 1933 (*m*), which provides that the wages and conditions of employment shall not be less favourable than those which would have to be observed under a contract complying with the Fair Wages Resolution of the House of Commons in force at the time.

The resolution at present in force is as follows :

"The contractor shall, under a penalty of a fine or otherwise, pay rates of wages and observe hours of labour not less favourable than those commonly recognised by employers and trade societies (or, in the absence of such recognised wages and hours, those which in practice prevail amongst good employers) in the trade in the district where the work is carried out. Where there are no such wages and hours recognised or prevailing in the district, those recognised or prevailing in the nearest district in which the general industrial circumstances are similar shall be adopted. Further, the conditions of employment generally accepted in the district in the trade concerned shall be taken into account in considering how far the terms of the Fair Wages Clause are being observed. The contractor shall be prohibited from transferring or assigning, directly or indirectly, to any person or persons whatever, any portion of his contract without the written permission of the department. Sub-letting, other than that which may be customary in the trade concerned, shall be prohibited. The contractor shall be responsible for the observance of the Fair Wages Clause by the subcontractor."

Any organisation representative of a person engaged in the road transport industry may make representations to the commissioners regarding the wages paid, or that the conditions of employment are not in accordance with the Fair Wages Clause, and if the matter in dispute is not satisfactorily settled, it shall be referred by the Ministry of Labour to the industrial court for settlement (*n*). A decision by the industrial court that a holder of a road service licence has been guilty of a breach of this section makes such holder liable to the revocation of his licence and to a penalty under the Act (*o*).

For the law relating to the hours of employment of drivers of public service vehicles, see title ROAD TRAFFIC. [48]

Fares.—A local authority authorised to run public service vehicles is empowered to demand such fares and charges "as they may think

(*l*) 23 Halsbury's Statutes 673.

(*m*) 26 Halsbury's Statutes 893.

(*n*) S. 93 (2); 23 Halsbury's Statutes 673.

(*o*) Ss. 72 (10), 74, 93 (3), and 113; *ibid.*, 663, 664, 673, 683.

fit" (p). Nothing in Part V. of the Act, however, is to be in derogation of Part IV. of the Act (q), and in consequence the Traffic Commissioners have power under sect. 72 (4) to attach to a road service licence such conditions as they may think fit, to secure, *inter alia*, that the fares shall not be unreasonable; also, where desirable in the public interest, the fares shall be so fixed as to prevent wasteful competition with alternative forms of transport, if any, along the route or in proximity thereto.

Minimum and maximum fares may be fixed by the commissioners (r) if it is represented by any person interested that it is desirable in the public interest. This power is, however, limited by the proviso in sect. 72 (7) that the commissioners are not authorised to fix minimum fares in excess of any fare or any maximum fare for the time being fixed under any local Act (r).

In practice the commissioners usually insist upon applications for fares increases being heard at a public sitting whether or not an objection has been lodged. An application by an operator for increase of fares may be refused for several reasons, e.g. already making sufficient profit, expenses considered to be too high, fares not in relation to the service performed, etc. When considering applications for reductions in fares, the commissioners take into consideration the possible effect of their introduction on railway traffic and other road operators, and reductions may not be allowed if the effect on these is harmful. When petrol prices increased, applications were made for corresponding increases of fares, but the increases were not granted solely on this account. The commissioners took the opportunity on those occasions to encourage operators to obtain the full advantage of co-ordination and to eliminate wasteful competition; they suggested, for example, that economies might be effected by decreasing the number of vehicles on certain services.

When considering applications for increases in fares, the commissioners base their decisions upon the ultimate financial results of the applicant's operations as a whole; particularly where an increase is applied for without a corresponding decrease on other highly rated sections of an operator's system. [49]

Application of Profits.—Fares and stages in municipal passenger transport are so fixed as to give the cheapest possible service to the travelling public. "Profit" in the commercial sense is absent from municipal transport operation. After meeting (i.) working expenses, and (ii.) all statutory charges, the amount finally remaining, i.e. the "free balance," may be applied, preferably in special appropriations for speeding up debt redemption, or in transfer to renewals or reserve funds, or rate aid. It would appear doubtful, however, whether the commissioners would agree to large surpluses being used for the purposes of rate aid. [50]

Wear and Tear Allowance for Income Tax Purposes.—Since the year 1916-17, there has been a uniform annual allowance made by the Board of Inland Revenue for wear and tear upon the capital outlay incurred in the purchase of omnibuses, of 20 per cent. on the written-down value. This arrangement is still in force. By the Finance Act,

(p) Road Traffic Act, 1930, s. 104 (1); 23 Halsbury's Statutes 680.

(q) *Ibid.*, s. 108 (2).

(r) *Ibid.*, s. 72 (6).

1982 (s), an addition of 10 per cent. (on the 20 per cent.) was allowed, making a total of 22 per cent. per annum. The object of this arrangement was to secure a uniform allowance which corresponds, as nearly as possible, with the useful life of the vehicle. [51]

Statistics.—The Road Traffic Act, 1930, sect. 76 (t), places upon holders of road service licences an obligation to supply to the Traffic Commissioners particulars of : (a) agreements and arrangements affecting the provision of passenger transport facilities ; (b) any financial interest which any other person providing or controlling transport facilities has in the business of the applicant or holder of the licence ; (c) any such interest which the applicant or holder has in the business of any other person who provides passenger transport facilities in the area (u). Refusal or failure to supply the particulars required by this section renders the offender liable to a penalty (a). [52]

Statistical Returns.—Operators of public service vehicles are required (b) to make financial and statistical returns to the Minister. A quarterly statistical return on Form F.S. 74 has to be rendered within two months after the end of the three-monthly period. The following information has to be supplied :

Seating capacity of the vehicles ; number of vehicles owned and licensed ; passengers carried ; receipts and vehicle miles run. In addition an annual financial return showing number of vehicles, capital expenditure and particulars relating to revenue account (income and expenditure) is to be made on Form F.S. 80 within four months after the close of the accounting year. Failure to comply with the provisions of this section renders the offender liable to a fine (c).

A statistical summary of public service vehicle operation appears in the appendix to the Annual Reports of the Traffic Commissioners. [53]

Accounts.—Where a local authority run public service vehicles, under Part V. of the Act, they are to distinguish, as far as is practicable, in their transport department's accounts, receipts and expenditure of their public service vehicles from that of any other form of transport, and, further, distinguish receipts and expenditure on capital from that upon revenue account (d). [54]

Exemption from Insurance.—In accordance with sect. 85 (4), vehicles owned by local authorities are exempted from the provisions of that section with regard to being insured against third party risks (e). [55]

Stopping Places, Stopping Points and Stands.—There are two kinds of stopping places. The first are *stopping points* at which vehicles must not stop for a longer time than is reasonably necessary for the taking up and setting down of passengers. The commissioners may, under sect. 72 (4) (f), specify such stopping points by attaching conditions

(s) S. 18 ; 23 Halsbury's Statutes 204.

(t) 23 Halsbury's Statutes 664.

(u) See S.R. & O., 1934, No. 95 ; 27 Halsbury's Statutes 645.

(a) Road Traffic Act, 1930, s. 76 (2) ; 23 Halsbury's Statutes 665.

(b) *Ibid.*, s. 75 (1).

(c) *Ibid.*, s. 75 (2).

(d) *Ibid.*, s. 106 ; 23 Halsbury's Statutes 681.

(e) 23 Halsbury's Statutes 636.

(f) *Ibid.*, 662.

to the road service licence. A local authority has no longer power to fix such points. It can only request the Traffic Commissioners to do so for them. It is an offence for a driver to cause a vehicle to remain stationary on a road longer than is reasonably necessary to pick up or set down passengers except at a stand or place authorised under sect. 90 (Public Service Vehicles (Conduct of Drivers, Conductors and Passengers) Regulations, 1938) (g). This type of stopping point can be changed by a variation of conditions attached to the road service licence. [56]

Secondly there are *stopping places* at which vehicles may stop for a longer time than is necessary for the taking up and setting down of passengers. A local authority may make an order (h), subject to confirmation by the Minister of Transport after consultation with the Traffic Commissioners, for fixing stopping places under this category, but that does not mean that public service vehicles must stop at those fixed places. Whether they do in fact stop there depends on the conditions attached by the commissioners to relative road service licences. This type of stopping place can only be changed by making a new order. [57]

Sect. 90 of the Act also provides that a local authority may make an order in respect of "stands" for public service vehicles. The distinction between "stands" and "stopping places" first drawn in the Town Police Clauses Act of 1889 (i) is thus maintained. It would appear that "stands" relate to portions of the highway on which public service vehicles may park "on or off the service route," e.g. whilst the driver has a meal or carries out repairs. On the other hand "stopping places" in respect of which a local authority is required to make an order under sect. 90 appear to refer to portions of the highway on the route over which the vehicle travels, at which it may be stopped for a longer time than is necessary to pick up or set down passengers, e.g. at a turning point, at a meeting place of two or more services, or at a stage where a vehicle ahead of schedule may wait until the time for departure. [58]

London.—See title LONDON ROADS AND TRAFFIC. [59]

(g) S.R. & O., 1933, No. 235, r. 7 (b); 26 Halsbury's Statutes 920.

(h) Road Traffic Act, 1930, s. 90; 23 Halsbury's Statutes 670.

(i) S. 6; 16 Halsbury's Statutes 63.

OPEN-AIR BATHS

See BATHS AND WASHHOUSES.

OPEN AIR SCHOOLS

POWER TO PROVIDE DEVELOPMENT OF OPEN AIR EDUCATION SELECTION OF THE CHILDREN	PAGE 20 29 29	REST PERIOD DIET LONDON	PAGE 30 30 30
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See also title : EDUCATION SPECIAL SERVICES.

Power to Provide.—The Education Act, 1921 (which repealed and replaced the Elementary Education (Defective and Epileptic Children) Act, 1899), requires a local education authority to make provision for the education of any defective children in their area by establishing schools, certified by the Board of Education, for such children (*a*). The authority may, as regards children resident in their area but attending classes or schools provided by another local education authority, be called upon to contribute towards the cost of the provision and maintenance of such classes or schools (*b*).

The power to provide schools for elementary education contained in the Act of 1921 (Part III.) is by sect. 62 extended to the provision of special schools for defective children. [60]

Development of Open Air Education.—From the small beginnings during the early years of the present century, the following types of open air schools have been evolved : (a) day open air schools for children suffering from anaemia, or malnutrition, or convalescing from acute disease ; (b) day open air schools for children in the quiescent stage of tuberculosis ; (c) day open air schools for delicate children, and also providing accommodation for cripples, and in some cases for educable mentally defective children ; (d) open air classes, either the children attending being selected by the school medical officer because they are delicate, or the class being transferred from the ordinary school to a park or playground without medical selection ; (e) residential open air schools which may be provided by a local authority or through voluntary funds ; (f) open air sanatorium schools for children with pulmonary tuberculosis ; (g) open air hospital schools for cripples ; (h) school camps and school journeys arranged for normal children who are sent under the care of their teachers for a fortnight or more during the summer to the country or the seaside. [61]

Selection of the Children.—The children are usually selected by the school medical officer, and suitable children may be found by him on his visits to schools or they may be referred to him by general medical practitioners, hospital physicians, school nurses, teachers, attendance officers, health visitors and voluntary workers. In many schools

(*a*) Education Act, 1921, s. 56 (1); 7 Halsbury's Statutes 163.

(*b*) Education (Institution Children) Act, 1923, s. 1 (1); 7 Halsbury's Statutes, 226.

arrangements are made for some places to be reserved for children sent by the tuberculosis medical officer, but such children must be certified by him as being in a non-infective stage of the disease. [62]

Rest Period.—Most authorities arrange a midday period of rest as part of the curriculum of open air schools. It appears to be the general practice for the rest to be taken in the open air, shelters being used on rainy days only. It is usual for the resting period, which varies from an hour to an hour and a half, to be taken after the midday meal, and it is considered necessary that a teacher or the school nurse should be on duty during the period, otherwise the small number of children who do not sleep may interfere with the quietude which is essential. [63]

Diet.—The provision of satisfactory meals is most important in the administration of an open air school. The dietary is usually drawn up by the school medical officer, the head teacher and the superintendent of domestic subjects. It has been found that many of the children suffer from the effects of dietetic deficiencies which have existed for a long time, and come from homes where the standard of living is low. The chief medical officer of the Board of Education is of opinion that the dietary should be planned to supply the total daily requirements of animal protein, fat, minerals and vitamins, for it cannot be assumed that a sufficiency of these will be obtained at home. He suggests that at least one pint of milk per child should be allowed per day, in addition to an adequate supply of meat or fish. Fruit, it is considered, should be given three times a week. In addition, one ounce daily of butter or of vitaminised margarine should be included. In many schools a small regular dose of cod liver oil is included. [64]

Value of Open Air Schools.—The reports of school medical officers of the more progressive local education authorities appear to be unanimous in their opinion of the high value of the open air school as a factor in the cure of malnutrition, and in all cases where children have been followed up after a period of years since their attendance at an open air school the results have been particularly gratifying. Not only is the school a centre for the teaching of personal hygiene and a means of educating the public in the essentials of healthy living, but it has also had a valuable effect on the planning of ordinary school buildings for, in a large proportion of plans of elementary schools submitted to the Board of Education, classrooms are now provided where children can be taught in the open air (c). [65]

London.—No special differences exist in the law applicable to London. The L.C.C. have fifteen open air day schools situated in the administrative county, in addition to three residential open air schools at seaside and country resorts. To these open air schools are sent children certified by the medical officer as incapable of receiving full benefit from the instruction given in ordinary schools. [66]

(c) See "The Health of the School Child" in particular, for the years 1923 and 1924, and "Handbook of Suggestions on Health Education," both published by H.M. Stationery Office.

OPEN SPACES

	PAGE		PAGE
INTRODUCTORY - - - - -	31	PRIVATE OPEN SPACES - - - - -	39
OPEN SPACES ACT, 1006 - - - - -	34	NATIONAL PARKS - - - - -	40
OPEN SPACES UNDER OTHER ACTS - - - - -	36	LONDON - - - - -	41
ADMINISTRATION BY MEANS OF BYE-LAWS - - - - -	36	Powers of Acquisition and Maintenance - - - - -	41
TRAFFIC AND AMENITIES - - - - -	36	Entertainments - - - - -	42
SAVINGS FOR OPEN SPACES UNDER OTHER ACTS - - - - -	37	Restriction of Rights of the Public - - - - -	42
THE NATIONAL TRUST - - - - -	38	Private Squares and Gardens - - - - -	43

See also titles :

ALLOTMENTS ;	DISUSED BURIAL GROUNDS ;
ANCIENT MONUMENTS AND BUILD- INGS ;	GAMES, PROVISION FOR ;
BYE-LAWS ;	LAKES IN PLEASURE GROUNDS ;
COMMONS ;	METROPOLITAN COMMONS ;
COMPULSORY PURCHASE OF LAND ;	PUBLIC PARKS ;
CORPORATE LAND ;	TOWN AND COUNTRY PLANNING ;
	VILLAGE GREENS.

Introductory.—The term "open space" might be taken to apply to all land not covered by buildings, but it has been narrowed in the definition contained in modern Acts of Parliament to "any land laid out as a public garden or used for the purposes of public recreation" (*a*). The essence of a statutory open space is therefore its enjoyment by the public, and the earliest forms were those of commons (*b*), where by custom the inhabitants near by had from time immemorial enjoyed the rights of recreation over certain areas. The same applies also to village and town greens; see title VILLAGE GREENS. Some municipal corporations also possessed land for recreation, and a return to the House of Commons of the amount belonging to each corporation was made in 1870 (*c*). The following information from Saffron Walden is typical: "The inhabitants have the exclusive right of recreation over a piece of land in the parish, containing about 18 acres, called the common. The right of the herbage and soil is in the lord of the manor, subject to this right."⁵ In many places, however, both as regards rights on commons and on corporate land, inclosure awards had deprived the inhabitants of these open spaces; and with the increase of population and spread of the towns in the first half of the nineteenth century, Parliament began to be troubled over the matter. In 1833, there was a report

(*a*) See Development and Road Improvement Funds Act, 1909, s. 19 (4); 9 Halsbury's Statutes 216; Defence of the Realm (Acquisition of Land) Act, 1916, s. 12 (3); 2 Halsbury's Statutes 1175; Town and Country Planning Act, 1932, Schel. III., Part II.; 25 Halsbury's Statutes 532; and the L.G.A., 1933, s. 174 (3); 26 Halsbury's Statutes 402; Housing Act, 1936, s. 148; 29 Halsbury's Statutes 663.

(*b*) See title COMMONS.

(*c*) H. of C. Papers, 1870, LV., 93.

from a select committee appointed "to consider means of securing open spaces in the vicinity of populous towns as walks and places of exercise" (*d*), and a grant was made of £10,000 for securing them (*e*). The Inclosure Act, 1845, provided that allotments for exercise and recreation, and for the labouring poor might be required as conditions of inclosure, and if not required the Inclosure Commissioners were to state the reason in their report (*f*). A return to the House of Commons in 1869 gives (*g*) the amount of such land since 1845 as 1,742 acres for exercise and recreation, 2,228 acres for the labouring poor, while 614,804 acres had been inclosed altogether. On many of the commons within the radius of twenty-five miles of London as reported in 1865 (*h*) some rights of recreation or exercise were claimed, as at East Hornden : "The public have no rights—the copyholders turn out cattle for pasture, and it is used by the boys as a play ground." And in Hackney : "As Hackney is now everywhere greatly increasing, all available building land being rapidly taken up, it is highly desirable that these open plots, commons and down lands should be rigidly protected for the benefit of the people as exercise ground and breathing space." At this period the Commons and Footpaths Society was formed for the protection of commoners' rights, and the prevention of illegal inclosures (*i*). Its policy is still to ensure the public enjoyment of public and private open spaces for recreation under proper conditions, and it assists and advises members of the public and local authorities on matters within its scope. The early work of the society led to the saving of Epping Forest, Hampstead Heath, Wimbledon Common and other of the open spaces in and near London. The society has also initiated other protective legislation, up to the inclusion of sects. 193 and 194 in the Law of Property Act, 1925 (*k*). [67]

There are no general statistics of open spaces other than commons, but it has been estimated that the total of all commons is 1½ million acres, that 60,000 acres have been regulated under the Acts of 1876 and 1899 and the Metropolitan Commons Acts, and that 105,101 acres in rural districts have already been made subject to sect. 193 of the Act of 1925. The society has a membership not only of individuals, but also of local authorities, of whom there were 1,260 in 1935, 830 of which were parish councils. As to their subscriptions, the M. of H. has written as follows in reply to a local authority applying for sanction to the payment : "If the council have reason to expect an adequate return for the expenditure involved, and if it is reasonable in amount, there appears to be no ground for regarding it as unlawful." By sect. 78 (*l*) of the Inclosure Act, 1845, the management and maintenance of the recreation grounds allotted under that Act were placed in the hands of the overseers and churchwardens of the parish, and by sect. 27 of the Commons Act, 1876 (*m*), arrangements were made for the

(*d*) H. of C. Papers, 1838 (448), XV., 337.

(*e*) *Ibid.*, 1843 (187), XXX., 727 : "Return of the manner in which £10,000 voted for public walks, etc., in 1840 was expended."

(*f*) Inclosure Act, 1845, ss. 30, 31 ; 2 Halsbury's Statutes 452, 453. As to the land for the labouring poor, see title ALLOTMENTS.

(*g*) H. of C. Papers, 1868-69, I., 579, and 1870, IV., 151.

(*h*) *Ibid.*, 1865-66.

(*i*) Since altered to Commons, Open Spaces and Footpaths Preservation Society, the address being 71, Eccleston Square, London, S.W.1.

(*k*) 15 Halsbury's Statutes 371. See title COMMONS, Vol. III., p. 307.

(*l*) 2 Halsbury's Statutes 474.

(*m*) *Ibid.*, 597.

expenditure of any surplus rents in draining and improving the grounds. By sect. 2 (1) (e) of the Commonable Rights Compensation Act, 1882 (n), any money received in compensation for the extinguishment of common rights might be spent in the purchase of land to be used as a recreation ground for the neighbourhood, by a committee of commoners. By local inclosure Acts and awards allotments had also been placed in the hands of trustees. [68]

By sect. 6 (1) (c) of the L.G.A., 1894 (o), the duties of the overseers and churchwardens in regard to all these recreation grounds passed to the parish council. By sect. 8 (1) (b) of the same Act (p) the parish council were given power to provide or acquire land for recreation grounds, and by sect. 8 (1) (d) the power to exercise over them the rights given to urban authorities as described below (q). In a rural parish, not having a separate parish council, recreation allotments formerly vested in the overseers or churchwardens and overseers are, since 1927, vested in the representative body of the parish (r). Sect. 14 of the same Act (s) provides for the transfer to a parish council, or to persons appointed by that council, of the legal estate in property held on trust for the benefit of the inhabitants of a rural parish, otherwise than on an ecclesiastical charity. [69]

The Recreation Grounds Act, 1859 (t), made provision for lands to be conveyed to trustees to be held by them as open public grounds for the resort and recreation of adults, and as playgrounds for children and youths (a), subject to any reservations, restrictions and conditions which the donor or grantor might think fit. Trustees, managers or directors were to be appointed and they might make bye-laws to be approved by the Charity Commissioners in accordance with the conditions of the grant. By sect. 56 of the Settled Land Act, 1925 (b), a tenant for life, who otherwise would have to obtain the concurrence of the remainderman, was permitted to cause or require any part of settled land in connection with a sale or grant for building purposes to be laid out, among other things, for squares, gardens or other open spaces, for the use, gratuitously or on payment, by the public or by individuals, and might convey them or vest them in the trustees of the settlement or other trustees, or any company or public body. Open spaces in the narrower sense of pleasure grounds are further dealt with in the title PUBLIC PARKS (c), and their use for games in the title GAMES, PROVISION FOR. A definition of "public open space" occurs in the Model Clauses issued from the M. of H. for purposes of the Town and Country Planning Act, 1932 (d); this is "to include land which at the date on which the scheme comes into operation is a playing field

(n) 2 Halsbury's Statutes 604.

(o) 10 Halsbury's Statutes 778.

(p) *Ibid.*, 780.

(q) *Post*, p. 26.

(r) Overseers' Order (S.R. & O., 1927, No. 55, Art. 7), set out at 10 Halsbury's Statutes 791.

(s) 10 Halsbury's Statutes 786.

(t) 19 Halsbury's Statutes 369. For form of conveyance, see s. 2 of the Act, and 11 Ency. Forms, p. 57.

(a) See title GAMES, PROVISION FOR.

(b) 17 Halsbury's Statutes 892.

(c) It is to be noticed that the powers given to other authorities under the P.H.As. were given to county councils by s. 14 of the Open Spaces Act, 1906; 12 Halsbury's Statutes 889.

(d) Clause 46.

L.G.L. X.—3

3442

belonging to a local authority or land reserved for use for a public open space or a playing field." [70]

Open Spaces Act, 1906.—The Open Spaces Act, 1906, repealed and in effect re-enacted the Metropolitan Open Spaces Acts, 1877 and 1881, and the Open Spaces Acts, 1887 and 1890. It falls into two main divisions, one dealing with the transfer to local authorities of existing open spaces or burial grounds (e) or land held in trust for public recreation, and their management, and the other with the acquisition and subsequent administration by local authorities of existing open spaces and burial grounds, followed by various financial sections. In this Act a fuller definition of open space is given—by sect. 20 (f) where it is said to mean "any land, whether inclosed or not, on which there are no buildings (g) or of which not more than one-twentieth is covered with buildings, and the whole or the remainder of which is laid out as a garden or is used for purposes of recreation, or lies waste and unoccupied." The Act gives no compulsory powers to local authorities to purchase land for open spaces.

By sect. 2 of the Act (h) trustees who have the care and management of any open space with a view to its preservation and management, under any local or private Act, are given powers, with the consent of the owners and occupiers of the houses which front it or are liable to be specially rated for it, to convey it for a consideration or not to any local authority or to transfer to the local authority the care and management of it to be preserved for the enjoyment of the public. Alternatively they may grant it for a term of years, or make any agreement with the local authority for its opening at all or any specified times to the public, and, whether or not there is anything to the contrary in the instrument under which the trustees were constituted, admit persons not owning, occupying or residing in any house fronting on the open space to the enjoyment of the open space either at all or at certain specified times. If the freehold of the open space and of all or the greater part of the houses round it are vested in the same person, his consent must be obtained. The purchase money or rent paid must be held by the trustees for the benefit of the persons or class of persons for whose benefit the open space was previously preserved and managed by the trustees, or, as the case may be, for the benefit of the object to which any rates previously imposed had been applied, and the persons are to be discharged from paying the rate either absolutely or during the continuance of the payment. [71]

By sect. 3 of the Act (i) power is given to trustees (not elected or appointed under any local or private Act of Parliament) to transfer the land to any local authority as a free gift absolutely or for a limited time, where it is held for purposes of public recreation, and by sect. 4, where it is held as an open space, if they obtain an order to do so under the Charitable Trusts Act, 1858. If the local authority accept the land as recreation ground they must hold it subject to the trusts and conditions on which the trustees held the land or on such other trusts and conditions as may be agreed between the trustees and the local authority

(e) See title DISUSED BURIAL GROUNDS.

(f) 12 Halsbury's Statutes 391.

(g) For cases as to buildings in connection with recreation grounds, see title PUBLIC PARKS.

(h) 12 Halsbury's Statutes 383.

(i) *Ibid.*, 384.

and the Charity Commissioners. Where any open space is subject to rights of user for exercise and recreation by the owners or occupiers of any houses round or near it, whether secured by covenant or not, by sect. 5 the owner or anyone with a limited interest in it may convey it to a local authority or grant it for a term of years or make an agreement for opening it to the public, with the consent of the owners or occupiers, and he is then discharged from any liability to any person entitled to any rights of user. By sect. 7 of the Act, any corporation having power to sell land other than a municipal corporation (*k*) is empowered to convey it or sell it to a local authority for the purpose of its being preserved as an open space for the enjoyment of the public either with or without the consent of any other corporation or person. Where the corporation is itself a local authority this section enables them to appropriate their land as an open space for the enjoyment of the public, and applies to such appropriation in the same way as if it were a conveyance (*l*). The special resolution and consents to be given are set out in sect. 8 of the Act. [72]

The powers of local authorities to acquire existing open spaces are set out in sects. 9—13 of the Act (*m*). By sect. 9 they are given power to acquire them by agreement or for valuable or nominal consideration or for a term of years, whether situate within their own area or not, and they may undertake their entire or partial care or management (*n*), and sect. 10 gives them, subject to any estate or interest under which they were acquired, power to control and maintain them by inclosing, draining, levelling, turfing, laying out and planting, lighting, providing with seats or otherwise improving the open space, and to employ such officers and servants as are needed for this purpose. Sect. 12 gives the same powers over open spaces already vested in the local authority under some other title; the particular object of this section was to give a workable power of making bye-laws in certain cases.

By sect. 13 no estate or interest or right of a profitable or beneficial nature affecting an open space may be taken away or injuriously affected without compensation, and this is to be paid by the local authority in the same way as for lands purchased or injuriously affected under the Lands Clauses Acts (*o*). Any two or more local authorities may by sect. 16 of the Act (*p*) jointly carry out the provisions of the Act and may make any necessary agreement on such terms as they may arrange for defraying the expenses, and any local authority may defray the whole or any part of the expenses incurred by any other local authority. The expenses generally are by sect. 17 of the Act to be defrayed as other expenses of local authorities from the rates, and by sect. 18 a local authority may borrow for the purposes of the Act (*q*). The Act does not apply to royal parks, or those under the care of the Office of Works, or any metropolitan common or any land belonging to either of the Honourable Societies of the Inner and Middle Temples.

[73]

(*k*) For the powers of municipal corporations, see s. 172 of the L.G.A., 1933; 26 Halsbury's Statutes 400.

(*l*) This applies to any land, not only that within the definition. See *A.-G. v. Teddington Urban Council*, [1898] 1 Ch. 66; 36 Digest 251, 39.

(*m*) 12 Halsbury's Statutes 387—389.

(*n*) Forms of conveyance are given in 11 *Ency. Forms*, 74—79.

(*o*) See title **COMPULSORY PURCHASE OF LAND**.

(*p*) 12 Halsbury's Statutes 390.

(*q*) See title **BORROWING**.

Open Spaces under Other Acts.—Under the Housing Act, 1936, the power of local authorities for the provision of houses for the working classes is extended to acquiring land for certain purposes, one of which is by sects. 78, 79 and 80 (*r*), the provision of open spaces and recreation grounds. By sect. 74 of the same Act, a local authority may purchase land compulsorily for these purposes, even if not immediately required, provided that it appears to the Minister that it may be so required within ten years. Under sect. 11 and Sched. II. (8) of the Town and Country Planning Act, 1932 (*s*), one of the purposes for which town planning schemes may also be made is the provision of open spaces, public or private (*t*), and by sect. 159 of the L.G.A., 1933 (*u*), local authorities may be authorised to purchase compulsorily land for such purposes as would include that of the provision of open spaces (*a*). [74]

Administration by Means of Bye-Laws.—Reference (*b*) has already been made to the Recreation Grounds Act, 1859, and bye-laws for the management, preservation, disposition and care of grounds provided thereunder. By sect. 8 (1) (*d*) of the L.G.A., 1894 (*c*), parish councils have, in respect to recreation grounds and open spaces, the same powers as may be exercised by urban authorities under the P.H.A.s. in regard to recreation grounds or public walks. By sect. 164 of the P.H.A., 1875 (*d*), this includes power to make bye-laws (*e*) for the regulation of any such public walk or pleasure ground, and by such bye-laws to provide for the removal from the public walk or pleasure ground of any person infringing any such bye-law by any officer of the urban authority or constable.

By sect. 15 of the Open Spaces Act, 1906 (*f*), all local authorities may make bye-laws substantially the same as under the last-mentioned power, in regard to any open space in or over which they have acquired any estate, interest or control under that Act, and by sect. 12 may do the same in regard to any similar space otherwise vested in them (see above for the effect of this in the sphere of bye-laws). All the bye-laws mentioned (except those under the Recreation Grounds Act, 1859, which so far as local authorities are concerned is for purposes of bye-laws superseded in practice by the Open Spaces Act, 1906) are, if made by local authorities, subject to confirmation by the Minister of Health, by virtue of sect. 250 of the L.G.A., 1933 (*g*). [75]

Traffic and Amenities.—Open spaces are protected from traffic by sect. 14 of the Road Traffic Act, 1980 (*h*), by which persons are prohibited from driving motor vehicles on any common land, moorland or other such land, except within fifteen yards of a road for the purpose of parking.

In regard to the amenities of open spaces generally, clause 49 of the Model Clauses under the Town and Country Planning Act, 1932, provides that where it appears to a council that the amenity of use zones or of any public open space or private open space is seriously injured by the condition of any garden, curtilage or private open space in the area, they may serve a notice on the person including the owner of unoccupied premises, by whose action or omission the injury arises,

(*r*) 20 Halsbury's Statutes 620, 623, 624. (*s*) 25 Halsbury's Statutes 484, 528.

(*t*) See *post*, p. 39. (*u*) 26 Halsbury's Statutes 392.

(*a*) See also titles GAMES and PUBLIC PARKS.

(*b*) *Ante*, p. 33.

(*c*) 10 Halsbury's Statutes 780.

(*e*) See title BYE-LAWS.

(*g*) 26 Halsbury's Statutes 440.

(*d*) 13 Halsbury's Statutes 693.

(*f*) 12 Halsbury's Statutes 389.

(*h*) 23 Halsbury's Statutes 622.

requiring him, within a period not being less than twenty-eight days from the date of the service of the notice, specified in the notice, to take action necessary to abate the nuisance. [76]

Savings for Open Spaces under Other Acts.—In various Acts, provisions are made for the protection of commons and open spaces where land is compulsorily acquired. For example, sect. 19 of the Development and Road Improvement Funds Act, 1909 (i), provides that where an order made under the Act authorises the acquisition of any land forming part of any common, open space, or allotment, the order, so far as it relates to the acquisition of such land, is provisional only and does not have effect unless and until it is confirmed by Parliament, except where the order provides for giving in exchange for such land, other land, not less in area, certified by the Minister of Agriculture and Fisheries to be equally advantageous to the persons, if any, entitled to any rights on it. By a proviso to the section nothing in the Act is to authorise the acquisition of land forming part of an open space on either side of any new road to be constructed by the Minister of Transport. Before giving any such certificate the Minister must give public notice of the proposed exchange, and must afford opportunity to all persons interested to make representations and objections and, if necessary, hold a local inquiry on the subject. Any order made must provide for vesting the land given in exchange in the persons in whom the open spaces were vested, subject to the same rights, trusts or other incidents, and for discharging the part of the open spaces acquired from all rights, trusts and incidents to which it was previously subject. By sect. 8 of the Roads Improvement Act, 1925 (j), any land required to be given in exchange is to be deemed to be required for the purposes of the construction or improvement of the road, with regard to grant from the Road Fund. The same form of safeguarding is provided in the Forestry Act, 1919, by sect. 7 (k), but there the land in exchange must be certified as equally advantageous to the persons entitled to rights and to the public, and there is no mention of opportunity to object or of an inquiry. The provision as to the need of confirmation or of exchange land is not to operate, however, if the order provides for the granting to the public of reasonable access to the land to be planted by the Forestry Commission for air, exercise or recreation unless the land to be acquired has been dedicated to the public use and enjoyment. [77]

By sect. 148 of the Housing Act, 1936 (l), in regard to any scheme or order under that Act authorising the acquisition or appropriation of any land forming part of an open space (m); and by Sched. III, Part II. (4) (i.), of the Town and Country Planning Act, 1932 (n), and Clause 66 of the Model Clauses thereunder (o) in regard to any scheme or order made in connection with a scheme authorising the acquisition or appropriation of land forming part of an open space, and by sect. 174 of the L.G.A., 1933 (p), in regard to a compulsory purchase

(i) 9 Halsbury's Statutes 216.

(j) *Ibid.*, 221.

(k) 3 Halsbury's Statutes 448.

(l) 29 Halsbury's Statutes 663.

(m) A scheme under this section does not enable land dedicated to the public by a local Act to be appropriated: *R. v. Minister of Health, Ex parte Villiers*, [1936] 2 K. B. 29; [1936] 1 All E. R. 817; 100 J. P. 212; Digest Supp.

(n) 25 Halsbury's Statutes 532.

(o) In the Model Clauses a provision is added that the council shall, as soon as practicable, undertake any works which may be necessary to put the surface of any land given in exchange into a state suitable for the exercise of the same rights as attached to the land acquired or appropriated.

(p) 26 Halsbury's Statutes 401.

order made under that Act authorising the acquisition of any such land, the order is to be provisional only until confirmed by Parliament, unless it gives other land, not less in area, certified by the Minister of Health, after consultation with the Minister of Agriculture and Fisheries, and the same provisions as to objections and vesting apply. [78]

The National Trust.—The National Trust was founded in 1894 "to promote the permanent preservation for the benefit of the nation of lands and buildings of beauty or historic interest," and it is its aim to keep intact as far as practicable the natural aspect and animal and plant life of the lands it holds. The Trust was incorporated by a private statute (g) in 1907 with perpetual succession and a common seal with power to purchase, take, hold, deal with and dispose of lands and other property without licence in mortmain, and in this Act is set out the constitution of the Trust. In the case of *In re Verrall* (r), the National Trust was held to be "charitable" within the legal meaning of that term, and it was decided in the same case that a woodland estate "to be preserved with its natural aspect and features, and in its then state and condition of sylvan beauty for the reasonable enjoyment of the public" was not a "recreation ground," under the Recreation Grounds Act, 1859. Following upon this decision the National Trust Charity Scheme Confirmation Act, 1919 (rr) was passed, which confirmed a scheme of the Charity Commissioners whereby the Council of the Trust may, with the consent of the Commissioners, grant leases of their property with proper conditions, restrictions, and reservations. The Trust is dependent on the subscriptions of members and on donations. In 1937 the Trust owned approximately 275 properties of an approximate acreage of 51,500. In addition 30 properties of approximately 18,000 acres were protected otherwise than by ownership. The common rights of large areas of common land are also held by the Trust. [79]

By the National Trust Act, 1937 (s), the purposes of the Trust were extended to include the promotion of the preservation of buildings and places of architectural and historic interest, the protection and augmentation of the amenities of such buildings and their surroundings, the preservation of furniture, pictures and chattels, and the access to and enjoyment of such buildings and chattels by the public. The Act also exempted the Trust from the provisions of the Mortmain and Charitable Uses Acts, and placed covenants to protect land in a position similar to agreements under sect. 34 of the Town and Country Planning Act, 1932. Under the 1937 Act a Country House Scheme is in operation whereby famous country houses may be preserved by the Trust, the public having access to them at stated times. The houses continue to be inhabited by the families associated with them, who are relieved from the burden of death duties. By sect. 31 of the Finance Act, 1937, land transferred to the National Trust is, on conditions, exempted from all death duties. [80]

By sect. 80 of the Act of 1907, the Trust may act in concert with or make any arrangements and agreements with any local authority or with any residents or committee of residents in the neighbourhood of any property or with any other persons in order to acquire or preserve their property.

(g) 7 Edw. 7, c. cxxxvii. The address of the Trust is 7, Buckingham Palace Gardens, Westminster, S.W.1. (r) [1916] 1 Ch. 100; 36 Digest 251, 38.

(rr) 9 & 10 Geo. 5, c. lxxxiv.

(s) 1 Edw. 8 & 1 Geo. 6, c. lvii.

By sect. 7 of the Act of 1937 the council of any county, borough, urban or rural district or parish, or two or more of them, may, with the consent of the Minister of Health and of any other Government department concerned, assure to the Trust lands and buildings vested in them. A council may, with the consent of the Minister, contribute to the expenses of acquisition by the Trust of any land or building in or near the district of the council and to the expenses of maintaining and preserving lands and buildings in or near the district vested in the Trust. Under sect. 8 of the 1937 Act land-owners who do not desire to make over their land to the Trust, but wishing the user to remain as it is at present, make a covenant to that effect with the Trust. Thus they remain the owners of the land but the Trust will have authority under the covenant to prevent any change.

The Trust may, by sect. 30 of the Act of 1907, make reasonable charges for the admission of the public to their property. By sect. 27 they must keep commons uninclosed, but otherwise may exercise powers including the setting apart of certain areas for the playing of games. The care of the property is often entrusted to local committees. By sect. 32 of the Act of 1907, bye-laws may be made by the Trust for the regulation and protection, etc., of the property. The bye-laws require confirmation by a Secretary of State.

By sect. 28 (4) of the Land Settlement (Facilities) Act, 1919 (*t*), no land belonging to the National Trust is to be compulsorily acquired for small holdings or allotments, and this saving is also made in regard to the power of entry on unoccupied land by the Allotments Act, 1922 (*u*). [§1]

Private Open Spaces.—A private open space is dealt with under that name in the Town and Country Planning Act, 1932, where, by sect. 11 and Sched. II. (3) (*a*), matters that may be dealt with in a scheme include open spaces, private and public. In the Model Clauses, under Clause 5, land is reserved for private open spaces, and by a note to that clause it is said that the object of the reservation of land as a private open space is to prohibit its use for building purposes generally, but, subject to that, to allow any use which will not injure the amenity of the locality. By Clause 9 land is to be deemed to be used as a private open space if, and only if, it is used (i.) in the case of certain specified land, as a private ground for sports, play, rest or recreation, or as an ornamental garden or pleasure ground other than a sports or recreation ground ordinarily open or intended to be ordinarily open to the public on payment of a charge; or (ii.) as arable, meadow or pasture land, osier land, orchards or nursery grounds, other than land used wholly or principally for the purposes of cultivation under glass, or as a plantation or wood or for the growth of saleable underwood. In the note to Clause 5 it is explained that Clause 9 is open to modification to meet the facts in a particular scheme, and that proposals to reserve land as a private open space should be fully discussed with owners, so that they may be aware of the implications of the reservations, and that in some cases it may be desirable to make an agreement under sect. 34 of the Act (*b*). By Clause 6 (5) of the Model Clauses, the appointed day in the case of lands reserved for use as a private open space may be the date on which the scheme comes into operation, or it may be such later date as the council may determine in any particular case, not less than six

(*t*) 1 Halsbury's Statutes 299.

(*u*) S. 10 (6); 1 Halsbury's Statutes 310.

(*a*) 25 Halsbury's Statutes 484, 528.

(*b*) See title TOWN AND COUNTRY PLANNING.

months after the date on which they have notified the persons having control of the land of their determination. By Clause 7 (2) the reservation of land as a private open space is not to prevent the council from purchasing the land, or any part of it, by agreement (but not otherwise) for the purposes of a public open space or playing field. [82]

Protection for private open spaces in a general sense is found in many Acts where land is to be acquired compulsorily for various objects. This takes the form of (c) stating that no person shall be required to sell a part of any land which forms part of a park or garden belonging to a house, if he is willing and able to sell the whole, unless the arbitrator determines that it can be taken without seriously affecting the amenity or convenience of the house (d), and a provision that nothing is to authorise the compulsory acquisition of any land which at the date of the compulsory order forms part of any park, garden or pleasure ground, or is otherwise required for the amenity or convenience of any house (d). [83]

National Parks.—The question whether it is desirable and feasible to establish one or more national parks in Great Britain with view to the preservation of natural characteristics, including flora and fauna, and to the improvement of recreational facilities for the people, was considered by a committee set up in September, 1929, which published a report in April, 1931 (e). The conclusions of this committee were that a system of national reserves and nature sanctuaries was desirable, and that where this could be ensured by planning schemes Regional Committees should be the executive bodies and small grants should be made to them of State funds. In other exceptional areas, payment might be made to their owners in return for restrictions; and a grant should be given to the National Trust, or a National Reserve Authority to be set up to co-operate with the National Trust and other kindred societies. The question also of exemption from estate duties of lands of national importance was considered. [84]

A step in the direction of national parks has been made by the National Forest Park Committee, appointed by the Forestry Commissioners on March 12, 1935 (f), to advise how the surplus and unplantable land in the forests of Ardgartan, Glenfinart, Benmore and Glenbranter, in the county of Argyll, might be put to a use of a public character. The Glasgow corporation owned some part of this land, and they have co-operated with the commissioners in deciding to make the district, which comprises nearly 100 square miles and is broken up into separate glens, available for recreation. The policy recommended and detailed in the report is to encourage the use of the area by members of responsible organisations including the Scottish Youth Hostels Association, the Scottish Ramblers' Federation, the Camping Club of Great Britain, Rover Scouts, Ranger Guides, the Scottish Association of Boys' Clubs and the corresponding Girls' Association, and the Way-

(c) Town and Country Planning Act, 1932, Sched. III., Part I. (8) (ii.) ; 25 Halsbury's Statutes 530, and the L.G.A., 1933, Sched. VI. (2) ; 26 Halsbury's Statutes 508.

(d) Small Holdings and Allotments Act, 1908, s. 41 ; 1 Halsbury's Statutes 268 ; Forestry Act, 1919, s. 7 (2) ; 3 Halsbury's Statutes 448, where " demesne " is included and also " land forming part of the home farm attached to and usually occupied with the mansion house " ; Education Act, 1921, s. 111, and Sched. V. ; 7 Halsbury's Statutes 190, 223 ; Housing Act, 1925, s. 64 ; 13 Halsbury's Statutes 1039 ; Restriction of Ribbon Development Act, 1935, s. 18 (3) (a) ; 28 Halsbury's Statutes 92.

(e) Cmnd. 8851, 2s. net.

(f) See Report, issued in 1935, price 6d.

faring Association, subject to such conditions as the commissioners may find necessary for decent behaviour and to minimise the risk of fire. [85]

London.—Various gardens and open spaces in London are owned and maintained by the Government, the L.C.C., the City corporation, and metropolitan borough councils, and, in a few instances, are vested in specially appointed commons conservators and trustees. Besides the open spaces maintained by public authorities there are in London a large number of squares and gardens in private ownership which are by statute to be kept as open spaces. About sixty spaces are maintained by the Metropolitan Public Gardens Association and other authorities and persons. These consist principally of small churchyards and disused burial grounds and vary in size from a fraction of an acre to nine acres. In addition the L.C.C. and the City corporation maintain parks and open spaces outside the county. [86]

Powers of Acquisition and Maintenance.—By sect. 144 of the Metropolis Management Act, 1855 (g), the Metropolitan Board of Works were empowered to take by agreement or gift any land, rights in land or property for the improvement of the metropolis and, where it appeared that further powers were required, to make application to Parliament for that purpose, and for the removal of doubt sect. 10 of the Metropolis Management Amendment Act, 1856 (h), explained that sect. 144 extended to authorise the Board to make application to Parliament for powers for providing parks and open spaces, etc. The powers of the Board were transferred to the L.C.C. under sect. 40 (8) of the L.G.A., 1888 (i).

Sect. 11 of the Metropolis Management Amendment Act, 1856 (j), as applied, empowers metropolitan borough councils to take land by agreement or gift for the purpose of an open space or pleasure ground, but no expenditure may be defrayed by rates except for the purpose of enclosing, maintaining, planting or otherwise improving the same. Part VI. of the L.C.C. (General Powers) Act, 1905 (k), as amended by the Act of 1933 (l), empowers the county council for the purpose of enlarging or improving any open space to enter into agreements with the owner or owners of lands adjacent to such open space for exchanging any part or parts of such open space for such lands or any part or parts thereof. Under sect. 23 of the L.C.C. (General Powers) Act, 1933, the county council and any borough council is empowered (in the case of land subject to rights of common) with the consent of the Minister of Agriculture and Fisheries, or (in the case of any other land) with the consent of the Minister of Health to utilise, alienate or exchange for other land any part of any open space vested in them or under their control for the purpose of street improvements.

Powers of acquisition, etc., in relation to particular open spaces have been obtained in numerous private Acts. General powers as regards bye-laws in various matters are contained in the Metropolitan Board of Works Act, 1877 (m), and the L.C.C. (General Powers) Acts, 1890 (n) and 1898 (o).

The L.C.C., City corporation and metropolitan borough councils are local authorities for the purpose of the Open Spaces Act, 1906.

(g) 11 Halsbury's Statutes 920.

(h) *Ibid.*, 960.

(i) 10 Halsbury's Statutes 719.

(j) 11 Halsbury's Statutes 961.

(k) *Ibid.*, 1277.

(l) 23 & 24 Geo. 5, c. xxviii.

(m) 11 Halsbury's Statutes 1007.

(n) Ss. 14-19, Sched. B. ; *ibid.*, 1018, 1022.

(o) S. 61 ; *ibid.*, 1224.

Fifteen metropolitan borough councils have had transferred to them under the Transfer of Powers (London) Order, 1933, the powers and duties of the council with respect to the maintenance, control and supervision of certain open spaces, forty-one in number, none of which exceeds two acres. [87]

Sect. 11 of the L.C.C. (General Powers) Act, 1926 (*p*), extends sect. 14 of the Open Spaces Act, 1906 (*q*), so as to enable the L.C.C. to exercise the powers of that section with respect to lands wholly or partly outside the county, subject to certain restrictions as to lands in a town planning scheme. The council may acquire by purchase, agreement or grant, and hold in fee simple or any lesser interest, any lands within or without the county for the purpose of eventually using them as open spaces, public walks or pleasure grounds (*r*), notwithstanding that the acquisition may not confer the right of immediate possession and the council may, as from the date of becoming owner in possession, use as an open space lands so acquired as if the lands had been acquired under the Open Spaces Act, 1906. Any local authority within the meaning of the Open Spaces Act, 1906, may contribute to the expenses of the council in acquiring lands under the section. Under sect. 12 of the Act, the council may contribute towards any expenses incurred by any other body being a local authority within the meaning of the Open Spaces Act, 1906, in the purchase or acquisition (otherwise than pursuant to the provisions of the Act of 1906) of lands either within or without the area of that body, and whether subject to any lease or not, for the purpose of being used as public works, pleasure grounds or recreation grounds or for other similar purposes.

The L.C.C. (General Powers) Act, 1935, gives power to the L.C.C. and metropolitan borough councils to provide facilities for games and sports (see title GAMES, PROVISION OF); to provide and contribute towards bands and provide entertainments (see below); to provide refreshments for sale to the public; and to erect and maintain buildings. The authorities may grant licences for the exercise of these powers by other persons and may let the buildings. Charges may be made for the facilities, etc., subject to a restriction as to reading-rooms that no charge may be made for more than twelve days in a year, or on more than four consecutive days. Provision is made in the Act for bye-laws and for agreements between local authorities. [88]

Entertainments.—Entertainments provided under the powers of the L.C.C. (General Powers) Act, 1935, above-mentioned, are subject to the following restrictions: stage plays and variety shows (whether indoor or outdoor) may only be given by amateurs; cinematograph exhibitions given indoors must relate only to health or disease. Professional performances may, however, be given by concert parties (with or without stage costume), by bands or by way of musical concerts.

Outdoor performances (including those in a bandstand) and dancing outdoors require no cinema, stage play, music or dancing licence, as the case may be, but this exemption does not apply to entertainments provided by licensees of the local authority in open spaces outside the county. [89]

Restriction of Rights of the Public.—Under sect. 44 of the L.C.C. (General Powers) Act, 1935 (*s*), the council and borough councils may

(*p*) 11 Halsbury's Statutes 1880.

(*q*) 12 Halsbury's Statutes 380.

(*r*) L.C.C. (General Powers) Act, 1926, s. 11 (2) (a); 11 Halsbury's Statutes 1880.

(*s*) 28 Halsbury's Statutes 153.

inclose any part of any open space (a) for the cultivation or preservation of vegetation or in the interests of public amenity; or (b) in the interests of the safety of the public. By sect. 42, these authorities may also set apart or enclose parts of open spaces for the purpose of providing facilities for sports, recreation and entertainments under the section. Where, however, a portion of an open space is set apart, but not specially laid out for games, the public are not to be excluded when such portion is not in actual use for games. Portions enclosed for audiences at entertainments must not exceed one acre in any open space.

All the above-mentioned powers of restriction are subject to the provision that, except in the interests of the safety of the public, some part of the open space must be left open to the public free of charge (t).

[90]

Under sect. 13 of the L.C.C. (General Powers) Act, 1926 (u) (as amended by the L.C.C. (General Powers) Act, 1935, sect. 54 and schedule) (a), the council has, in respect of burial grounds (not being disused burial grounds), similar powers of enclosure to those granted by sect. 44 of the Act of 1935.

Sect. 49 of the Act of 1935 (b) confers on metropolitan borough councils, in respect of open spaces of not less than two acres in extent, powers comparable to those of sect. 44 (1) of the P.H. Acts Amendment Act, 1890, as to the use of parks, etc., for charitable purposes. The part enclosed under this provision must not exceed half of the open space and it is to be condition of a grant of such use that any damage must be made good by the person to whom the use is granted.

For provisions as to recreation grounds, see titles GAMES, PROVISION FOR, and PUBLIC PARKS. [91]

Private Squares and Gardens.—The London Squares Preservation Act, 1931 (c), protects from use, otherwise than as gardens or similarly (except in accordance with that Act), a number of squares and gardens in private ownership. [92]

(t) S. 51 (2); 28 Halsbury's Statutes 155.

(u) 11 Halsbury's Statutes 1381.

(a) 28 Halsbury's Statutes 156, 165.

(b) *Ibid.*, 154.

(c) 21 & 22 Geo. 5, c. xciii.

OPHTHALMIA NEONATORUM

See INFECTIOUS DISEASES.

OPPOSITION TO BILL

See BILLS, PARLIAMENTARY AND PRIVATE.

ORCHARDS

See DERATING.

ORCHESTRA, MUNICIPAL

See ENTERTAINMENTS, PROVISION OF.

ORDERS

	PAGE		PAGE
INTRODUCTORY	— — —	ORDERS OF LOCAL AUTHORITIES	60
ORDERS OF CENTRAL AUTHORITY	45	Power to make Orders	— — —
Methods of Control by Order	45	Methods of Control	— — —
Power to make Orders	46	Different Types of Orders of	
Different Types of Orders	48	Local Authorities	— — —
Effect of Orders	— — —	Methods of Lesser Authority to	
Methods of an Inferior Authority		Obtain Order	— — —
to Obtain an Order	49	List of Subject-Matters	— — —
List of Subject-Matters	— — —		64
	50		

See also titles :

APPEALS TO MINISTERS ;

INQUIRIES ;

OBJECTIONS STATED TO MINISTERS ;

POWERS OF MINISTERS ;

PROVISIONAL ORDERS ;

STATUTORY RULES AND ORDERS.

INTRODUCTORY

This title contains a list of certain orders that may be made, under statutory authority, by central authorities and local authorities. The former orders are such as are not found printed in Statutory Rules and Orders (as to which see that title), and do not constitute that form of statutory order usually known as Regulations; but the list does include a number of orders which, though not printed in full, are indexed in Statutory Rules and Orders. A complete list is not possible, but sufficient examples have been included to illustrate the various matters that may be dealt with by orders of both central authorities and of local authorities.

The orders printed or indexed in Statutory Rules and Orders are generally legislative and those not so printed or indexed are mainly administrative. [98]

ORDERS OF CENTRAL AUTHORITY

Methods of Control by Order.—Criticism of the practice of delegating legislative powers to Ministers (a) led to the appointment of a committee by Lord Sankey when Lord Chancellor in 1929 (b). The Chairman was the Earl of Donoughmore, who on resignation in 1931 was succeeded by Sir Leslie Scott, K.C. (now Lord Justice Scott). The committee considered that "delegated legislation is both legitimate and constitutionally desirable for certain purposes, within certain limits, and under certain safeguards," for the following reasons : the great pressure upon Parliamentary time, the technical nature of the subject-matter of modern legislation, the difficulty of working out beforehand the administrative machinery for complex schemes of reform and the impossibility of foreseeing all contingencies and local conditions, the necessity for providing for adaptation of administrative schemes without amending legislation, the opportunity for experiment, and the making of provision for quick legislative action in cases of

(a) See title POWERS OF MINISTERS.

(b) Their Report was published in 1932 : Cmd. 4060. H.M. Stationery Office.
2s. 6d. net.

emergency. They made a number of recommendations for maintaining and strengthening the supremacy of the law. [94]

Power to make Orders.—The nature of the control exercised by ministerial orders may be gathered from the following list of powers delegated under various enactments.

A Minister may be empowered :

To give directions, e.g. under sect. 87 (3) of the L.G.A., 1933 (c) (to direct a R.D.C. to appoint a parochial committee), or, by sect. 42 (1) of the same Act, in connection with the appointment of rural district councillors. [95]

To confirm (with or without modifications) orders of local authorities, e.g. under sect. 142 of the Act of 1933 (d) as to the alteration of urban and rural districts and parishes; under sect. 107 of the P.H.A., 1926 (e), adding trades to the statutory list of offensive trades. [96]

To make declarations, e.g. under sect. 190 (3) of the Act of 1933 (f) with regard to "special expenses," and under sect. 61 of the L.G.A., 1929 (g), in connection with sect. 2 (4), proviso (b), of the Notification of Births Act, 1907 (h). [97]

To enforce (sometimes by mandamus) a duty cast upon a local authority, e.g. under sect. 199 of the Act of 1933 (i), with regard to returns showing provision made for repayment of moneys borrowed. [98]

To transfer powers of one local authority to another, e.g. sect. 270 of the L.G.A., 1933 (k). [99]

To remove restrictions, see e.g. sect. 12 of the Restriction of Ribbon Development Act, 1925 (l). [100]

To fix a standard, see sect. 1 (4) of the same Act (standard width) (m). [101]

To vary a statutory limitation or list.—See sect. 60 of the Housing Act, 1936 (n); sect. 4 of the P.H. (Smoke Abatement) Act, 1926 (o); sect. 19 of the Petroleum (Consolidation) Act, 1928 (p); and sect. 1 of the Road Traffic Act, 1934 (q). [102]

To apply provisions of one Act to another.—See sect. 52 of the Town and Country Planning Act, 1932 (r). [103]

To attach conditions to an order, e.g. see sect. 113 (2) of the L.G.A., 1929 (s). [104]

To remove difficulties (sometimes a temporary power).—See e.g. sect. 130 of the L.G.A., 1929 (t), and sect. 67 of the Rating and Valuation Act, 1925 (u). [105]

To delay operations under an Act.—See e.g. sect. 6 of the Rivers Pollution Prevention Act, 1876 (a). [106]

To consent to adoption of an adoptive Act or section, e.g. sect. 3 of the P.H.A., 1925 (b). [107]

To amend or adapt a local Act (commonly on the application of a local authority : see sect. 6 of the P.H.A., 1925) (c). (More often,

- (c) 26 Halsbury's Statutes 354.
- (c) 29 Halsbury's Statutes 408.
- (g) 10 Halsbury's Statutes 925.
- (i) 26 Halsbury's Statutes 415.
- (l) 28 Halsbury's Statutes 90.
- (n) 29 Halsbury's Statutes 611.
- (p) *Ibid.*, 1184.
- (r) 25 Halsbury's Statutes 519.
- (t) *Ibid.*, 900.
- (a) 20 Halsbury's Statutes 818.
- (c) *Ibid.*, 1117.

- (d) *Ibid.*, 382.
- (f) 26 Halsbury's Statutes 409.
- (h) 15 Halsbury's Statutes 766.
- (k) *Ibid.*, 460.
- (m) *Ibid.*, 82.
- (o) 13 Halsbury's Statutes 1150.
- (q) 27 Halsbury's Statutes 535.
- (s) 10 Halsbury's Statutes 953.
- (u) 14 Halsbury's Statutes 686.
- (b) 13 Halsbury's Statutes 1116.

however, effected (on the application of the local authority concerned) by provisional order, or by S.R. & O.; see those titles.) [108]

To make consequential and incidental provisions (usually by S.R. & O., as to which see title STATUTORY RULES AND ORDERS). [109]

Power to make Orders (d).—The power of a Minister to make orders can be derived only from some particular enactment, and orders must be made under defined conditions. A particular enactment may enable a Minister by order to draw up a comprehensive code of rules or regulations for the proper carrying into effect of the provisions of a section of that Act. In such a case there is usually a statutory direction requiring such regulations to be laid before Parliament. This "laying" may take one of several forms. It may be a mere "laying" with no further directions imposed (e), or a "laying" with a provision that, if within a specified time a resolution is carried by either House for annulling (or modifying), the regulation may, or shall, be annulled by Order in Council (f). Further, it may be provided that the regulation is not to operate until confirmed by a resolution, or is not to operate beyond a certain stated period unless approved by resolution within that period (g). The "laying" may be in draft for a certain number of days, usually expressed to be days on which each House has sat, but sometimes, especially in earlier legislation, without this qualification; or it may, in a matter of finance, be before the House of Commons only (h). Finally the requirement of laying a draft may include provision that the regulation is not to be made in accordance with the draft until the latter has been approved by resolution (i). [110]

As was pointed out in the Report of the Committee on Ministers' Powers (k) this "laying" before Parliament of regulations (and it is to be noted that delegated powers are referred to in various enactments under a confusing variety of names, viz. "regulations," "rules," "orders," "warrants," "minutes," "schemes," "bye-laws," etc.) constitutes one of two special safeguards (l) against abuse of ministerial powers, in cases where the power of the Minister may be in excess of some of the more formal powers given in the list, *ante*, p. 46 (m).

The power of the Minister sometimes includes the direction that the order, when made, "shall have effect as if enacted in this Act." This direction has been criticised on the ground that its inclusion may preclude a court of law from inquiring into the validity of the order. In the *Yaffe Case* (n) it was laid down that it is the Act itself that empowers the making of the order, and, therefore, should the order conflict with the Act, the latter must prevail. [111]

(d) See "Different Types of Orders," *post*, p. 48.

(e) See e.g. Confirming Orders of the Minister of Health under L.G.A., 1933, s. 142; 26 Halsbury's Statutes 382.

(f) See e.g. Rules under the Nurses Registration Act, 1919, s. 8 (4); 11 Halsbury's Statutes 750.

(g) Town and Country Planning Act, 1932, s. 35; 25 Halsbury's Statutes 506.

(h) See e.g. the Housing Act, 1930, s. 109; 29 Halsbury's Statutes 645.

(i) See e.g. Stock Regulations under L.G.A., 1933, s. 204; 26 Halsbury's Statutes 416.

(k) 1932 Cmnd. 4060.

(l) The other being the publicity afforded by the Rules Publication Act, 1893; 18 Halsbury's Statutes 1016.

(m) See also title STATUTORY RULES AND ORDERS, which category comprises most orders which require "laying."

(n) *Minister of Health v. R., Ex parte Yaffe*, [1931] A.C. 494 (Digest Supp.). See also title POWERS OF MINISTERS.

Further safeguards against abuse are provided by the various methods frequently imposed by statute for publication, consideration of objections, and the holding of a public local inquiry (*o*) and consultation between two or more Ministers concerned. Again, consultation may be directed to take place between a Minister and some body, such as for example the London and Home Counties Traffic Advisory Committee, in respect of regulations under the London Traffic Act, 1924, or between Ministers and representative associations (*p*), see e.g. sect. 18 of the Mining Industry Act, 1926.

The power to make an order frequently extends in terms to the amendment or revocation of the order, usually after the same procedure as in the case of the original order, and where the order consists of or comprises rules or regulations, a power to rescind, revoke, amend, or vary them is given by sect. 32 (3) of the Interpretation Act, 1889 (*q*). [112]

Different Types of Orders. *Orders in Council.*—Orders made in virtue of the Royal Prerogative are legislative. They constitute "what is left of the original sovereign power of the Crown to legislate without the authority of the Houses of Parliament." They are not therefore in any sense delegated legislation. Orders of this nature were frequently made during the Great War, as for example the Second Reprisals Order of February 16, 1917, relating to the blockade of Germany.

Statutory Orders in Council arising from powers expressly delegated by Acts of Parliament, constitute a constantly increasing class of delegated legislation. [113]

Departmental Regulations.—These are an important form of delegated legislation; some provisions of this character are issued by departments under the title of rules or orders. They are the legislative acts of the responsible Minister performed in pursuance of powers conferred upon him by Act of Parliament, and are generally classified as Statutory Rules and Orders, and printed or indexed as such (*r*). [114]

Provisional Orders.—These are not delegated legislation. Such orders are, in practice, drafted by a department or by the promoters and receive their final form before they are submitted to Parliament. They do not obtain the force of law until confirmed by an Act of Parliament (*r*). [115]

Special Orders.—This class again presents a bewildering variety of forms of the order, and further confusion results from the fact that a "special order" sometimes means a provisional order. It is provided by sect. 26 of the Electricity (Supply) Act, 1919 (*s*), that "anything which under the Electric Lighting Acts may be effected by a provisional order confirmed by Parliament may be effected by a special order made by the Electricity Commissioners and confirmed by the Board of Trade under and in accordance with the provisions of this Act, or by an order establishing a joint electricity authority under this Act, and references in those Acts and the Electric Lighting (Clauses) Act, 1899, to provisional orders shall be construed as including references to such special orders and orders as aforesaid . . . and . . . Provided that a special

(*o*) See titles APPEALS TO MINISTERS, OBJECTIONS STATED TO MINISTER and INQUIRIES.

(*p*) See the Mining Industry Act, 1926, s. 18; 12 Halsbury's Statutes 201.

(*q*) 18 Halsbury's Statutes 1008.

(*r*) See title STATUTORY RULES AND ORDERS.

(*s*) 7 Halsbury's Statutes 772.

order made in pursuance of the powers conferred by this section shall be laid before each House of Parliament and shall not come into force unless and until approved, either with or without modification, by a resolution passed by each such House."

A further use of the term "special order" is to be found in recent standing orders of the House of Lords, where it includes certain regulations, rules, etc., requiring an affirmative resolution of that House.

[116]

General Order.—A further confusion in nomenclature arises from the use of such term as "general or special order." Thus, under sect. 52 of the Town and Country Planning Act, 1932 (*t*), the Minister of Health is empowered to make a general or special order under that section, applying the provisions of the 1932 Act to certain matters, instead of provisions already existing, to such extent and with such modifications as he may think fit.

The expression "general order" is usually applied to an order, or one of a series of orders, which affect one or more classes of authority, but for poor law purposes the expression applies to any order affecting more than one poor law authority. [117]

It is desirable that when legislative powers are conferred upon a Minister they should be clearly defined in the statute authorising the delegation. If such powers are exercised in a proper manner they may be of great value in advancing the public welfare, and in some cases individual convenience may be met more readily by regulations than by statute; but on the other hand the granting of such important powers to a department necessitates that care be exercised lest they be used in a manner which may inflict hardship or inconvenience beyond what Parliament contemplated. In practice there is free consultation between the departments and all interested bodies before regulations are made. [118]

Effect of Orders.—An order, when made, has the same effect as though its contents had been included in the enactment which authorised it, subject only to its validity being questioned by the courts. The finality of the order is sometimes referred to in the enabling statute in such a way as to suggest the exclusion of the jurisdiction of the High Court. Thus, "the Minister may confirm this order and the confirmation shall be conclusive evidence that the requirements of the Act have been complied with, and that the order has been duly made and is within the powers of this Act" (*u*). The Supreme Court has not yet been called upon to consider the effect of such a provision, but it is suggested that this form of words may not exclude the jurisdiction of the courts in relation to these matters.

It may be noted here that an order under sect. 40 of the Housing Act of 1925 (*a*) (now repealed) was "to have effect as if enacted in this Act," but it was held (*b*) that, even in such a case, the court is not precluded from deciding whether the particular order made is *ultra vires* the Minister. [119]

Methods of an Inferior Authority to obtain an Order.—The methods by which an inferior authority (e.g. a local authority) may obtain an

(*t*) 25 Halsbury's Statutes 510.

(*u*) Small Holdings and Allotments Act, 1908, s. 39; 1 Halsbury's Statutes 266; Housing Act, 1935, Sched. III.; 28 Halsbury's Statutes 263.

(*a*) 18 Halsbury's Statutes 1925.

(*b*) Minister of Health v. R., *Ex parte Yaffe*, *ante*, p. 47, note (*n*).

order from a Minister are contained in the enabling enactments, and differ according to the nature of order required. The procedure generally is by :

Petition, Application or Representation to the Minister, who may as a matter of course make the order requested. The application on behalf of a local authority must sometimes be made in a form prescribed by the enactment concerned. Such an order is purely administrative, and does not require the exercise of any judicial or quasi-judicial powers by the Minister. Usually before making the order the Minister will consult with the local authorities or with outside bodies. He may either cause a public local inquiry to be held (e), using his discretion in so doing, or cause it to be held only if objections are made and not withdrawn, to proposals of a local authority requiring the confirmation, by order, of the Minister. [120]

Joint Representation : By sect. 148 (2) of the L.G.A., 1933 (d), the Minister may, by order, alter or define the boundary between a county and a county borough. Such an order is obtained by a joint representation made by the councils concerned, and a public inquiry may be held except where the Minister is satisfied that it is unnecessary.

[121]

Submissions of a Local Authority for a Confirmatory Order giving effect to their own Order.—The procedure for the confirmation of an order for the compulsory purchase of land under sect. 161 of the L.G.A., 1933 (e), illustrates the procedure where a local inquiry may be necessary. The order is drawn up by the local authority in the prescribed form. Before being submitted to the Minister it is published in one or more local newspapers (f), then notice is served on every owner, lessee and occupier also in the prescribed form (Schedule VI.), stating the effect of the order, the fact that it is about to be submitted for confirmation, and specifying the time for and the manner in which objection may be made. If no objections are made, or any made are withdrawn, the Minister, when satisfied that the above procedure has been followed, may confirm the order with or without modification. In every other case he must, before confirming the order, require a local inquiry to be held, in which objections not withdrawn will be considered. He will then consider the report of the person holding the inquiry and confirm the order with or without modification. As soon as may be after the compulsory purchase order has been confirmed, the local authority must publish in one or more local newspapers the fact that the order has been confirmed, naming a place where a copy of the confirmed order may be inspected, and serve in prescribed form a like notice and copy of the order on persons to whom such notices are required to be sent. [122]

List of Subject-Matters.—The following is a list of a number of matters which may be dealt with by means of orders of a central authority. The list does not purport to set out all such matters, but to indicate those of most common occurrence in relation to local government. In this list certain powers are included which are spent, or replaced by powers in later Acts, because orders made in virtue of such powers are still in operation.

(e) L.G.A., 1933, s. 168 (7); 26 Halsbury's Statutes 399.

(d) 26 Halsbury's Statutes, 383.

(c) *Ibid.*, 394.

(f) L.G.A., 1933, s. 161 (8) (a); 26 Halsbury's Statutes, 395.

ORDERS

Subject-Matter of Order.	Authorising Section.	Order-making Authority.	Points to be noted.
Relaxation of provisions of leasehold interest acquired by a local authority.	Sect. 7 (5).	M. of H.	Application of local authority.
Transference of powers of metropolitan borough council to L.C.C.	Sect. 80 (1).	M. of H.	Representations to M. of H. by the county council.
Allowance of reasonable expenses of owner in opposing clearance order or compulsory purchase order.	Sect. 49.	M. of H.	Order may be made rule of High Court.
Overscrodding provisions : Increase of permitted number temporarily.	Sect. 60.	M. of H.	Representation of local authority and consultation with Central Housing Advisory Committee.
Provision of houses : ancillary powers and application of statutory provisions.	Sect. 80.	M. of H.	Application of statutory provision to land or building provided or maintained with Minister's consent.
Transferance of powers of metropolitan borough council to L.C.C. and vice versa.	Sect. 103 (3).	M. of H.	
Review of Government contributions in case of new houses.	Sect. 109.	M. of H.	
Joint issue of local bonds by two or more local authorities or county councils.	Sect. 122 (3).	M. of H.	
Constitution and procedure of Central Housing Advisory Committee.	Sect. 135.	M. of H.	
Provision for joint action under the Act by local authorities.	Sect. 151.	M. of H.	
Transferring powers of R.D.C. under Act to the county council.	Sect. 169.	M. of H.	
Default by county council in exercise of transferred powers.	Sect. 170.	M. of H.	
Default of local authority other than R.D.C.	Sect. 171.	M. of H.	
Vesting in and transference to local authority of property, debts, etc., acquired by Minister in his exercise of their powers.	Sect. 173.	M. of H.	
Declaration of default of metropolitan borough council.	Sect. 175.	M. of H.	

LOCAL GOVERNMENT

Subject-Matter of Order.	Authorising Section.	Order-making Authority.	Points to be noted.
(I) LOCAL GOVERNMENT ACT, 1929			
Combination of councils of counties or county boroughs for special purposes.	Sect. 3.	M. of H.	Application by councils. Local inquiry necessary if any dissentient council. To be laid before Parliament. To be laid before Parliament. This power is spent. To be laid before Parliament.
Application of provisions of L.G.A., 1929, to poor law unions with appointed guardians.	Sect. 20.	M. of H.	Order made on report of county council or on representation by other local authorities.
Increase of fees fixed by Registration Acts (Births, Marriages and Deaths).	Sect. 22.	M. of H.	Local inquiry necessary if all objections not withdrawn. To be laid before Parliament.
Review by county councils of electoral divisions.	Sect. 30.	Secretary of State (Home Secretary).	Local inquiry necessary if all objections not withdrawn. To be laid before Parliament. Time limit given. If default continues transfer to county council. Made on representation by local education authority for elementary education. Minister's discretion.
Default of council of district within a county in providing sewerage facilities, water facilities, etc.	Sect. 37.	M. of H.	Local inquiry on request of county council.
Transfer of maternity and child welfare services to council who are elementary education authority for area.	Sect. 60.	M. of H.	Right of councils to be heard before order is made.
Declaration that Notification of Births Act, 1907, sect. 2(4), proviso (b), shall have effect as if it had been adopted by district or county council.	Sect. 61.	M. of H.	This power is spent.
Direction that district council shall be local supervising authority under the Midwives Acts, 1902 to 1926, in place of county council.	Sect. 62.	M. of H.	[154]
Transfer to county council of functions under scheme for hospital accommodation for infectious disease, in default of district council.	Sect. 63 (6).	M. of H.	
Determining appointment of poor law property and liabilities between two or more county or county borough councils, in default of agreement between the councils.	Sect. 113.	M. of H.	

ORDERS

This power is spent.

M. of H.
Sect. 119.

Transfer of officers of dissolved poor law authority whose area was in more than one county or county borough.

Determining to which council or councils officer is transferred and apportioning of salary. If necessary, in default of agreement.

Dispensation with, necessary for establishment by a county council of superannuation fund under Local Government and other Officers' Superannuation Act, 1922, in respect of transferred road officers.

Removal of difficulties in connection with application of L.G.A., 1929, to exceptional areas.

Application of provisions of 1929 Act to Scilly Isles or Isle of Wight.

Adaptation of forms prescribed by any enactment to bring them into conformity with L.G.A., 1929.

Amending or adapting local Act to bring any provision into conformity with L.G.A., 1929.

M. of H.
Sect. 125 (1), proviso.

M. of H.
Sect. 130.

M. of H.
Sect. 138.

Sched. X,
part. 3.
Sched. X,
part. 4.

M. of H.
Sect. 87 (3).

Direction to appoint parochial committee for a constituency place in default of action by R.D.C.

Union of districts for appointment of M.O.H.

Alteration of area of local government partly situate in the county.

Adjustment of boundaries of counties and county boroughs in respect of a county district or parish not wholly in one county, or detached part of county.

Giving effect to proposals in review of county districts by county councils (at not less than decennial intervals).

Orders here mentioned may contain any incidental, consequential or supplemental provisions that may be necessary (sect. 148 ; as to amendment of such an order, see sect. 149).

M. of H.
Sect. 125 (1), proviso.

M. of H.
Sect. 130.

M. of H.
Sect. 138.

Sched. X,
part. 3.
Sched. X,
part. 4.

M. of H.
Sect. 112.
Sect. 140 (d).

M. of H.
M. of H.
Sect. 143.

M. of H.
Sect. 146.

This power is spent.

Order may specify exceptions, adaptations and modifications, and may amend or repeal certain specified local Acts.

Adaptations to be such as appear to the Minister to be necessary.

Application of council concerned.

To be had before Parliament as soon as may be after made.

(II) LOCAL GOVERNMENT ACT, 1933

On application of parish council or parish meeting of parish wholly or partly comprised in contrabutory places.

Representations by council of county district.

Local inquiry to be held.

Proposed by county council.

Note : Orders under sect. 140 (a), (b) and (c) are provisional.

Joint representation by county councils concerned.

Local inquiry to be held unless Minister is satisfied that such is unnecessary.

Representation by local authorities to be considered.

If objection is made by council of an affected borough within four weeks of the making of the order and is not withdrawn, the order will be provisional only.

All other orders under this power to be laid before Parliament.

[125]

Subject-Matter of Order.	Authorising Section.	Order-making Authority.	Points to be noted.
<i>Acquisition of Land.</i> Compulsory purchase of land by county council on behalf of parish council.	Sect. 168 (7).	M. of H. (in default of county council).	Local inquiry to be held. Order to have effect as if made by county council and confirmed by Minister.
<i>Financial Expenses and Borrowing.</i> Declaring any expenses of a R.D.C. to be special expenses, separately chargeable on certain contributory place or places.	Sect. 190.	M. of H.	Application of R.D.C.
Allowing parish council or parish meeting to incur expenses in excess of prescribed maxima.	Sect. 193.	M. of H.	
Directions for payment or application of specified sum for certain purposes by local authorities to correct default shown in return as to repayment of borrowed money.	Sect. 190 (3).	M. of H.	May be enforced by mandamus.
Imposing conditions as to borrowing by county councils for loan to parish council.	Sect. 201.	M. of H.	
Payment of expenses incurred by district auditor in defending any allowance, disallowance or surcharge made by him.	Sect. 234.	M. of H. (or Court).	After consultation with Charity Commissioners or Board of Education.
Regulating the appointment of trustees of a charity by the council of a borough or urban district divided into wards.	Sect. 249 (3).	M. of H.	
Conferring functions of a parish council on a borough or urban authority.	Sect. 271.	M. of H.	Minister's powers additional to those contained in sect. 276 of P.H.A., 1875.
Conferring functions of urban district councils on rural district councils.	Sect. 272.	M. of H.	Application of council of Isles of Scilly.
Application of Act to Scilly Isles.	Sect. 292.	M. of H.	If order not made within two years after commencement of Act and on application of joint board or committee of Scilly Isles.
Application of provisions of 1933 Act to Joint Boards, &c.	Sect. 293.	M. of H.	This power is spent, except as regards provisional orders.

NOTE.—For purposes of the Act of 1883, "local authority" means the council of a county, county borough, county district or rural parish. [126]

ROADS AND ROAD TRAFFIC

- (i) Highways and Locomotives (Amendment) Act, 1878.
- (ii) Highways and Bridges Act, 1891.
- (iii) L.C.A., 1892.
- (iv) Road Traffic Act, 1898.
- (v) Road Traffic Act, 1924.
- (vi) Restriction of Ribbon Development Act, 1935.

ORDERS

Subject-Matter of Order.	Authorising Act and Section.	Order-making Authority.	Points to be noted.
Declaration that county road in municipal borough has ceased to be such.	H. & L.A.A., 1878 sect.16, as amended by H.R.A. A., 1891, sect. 4, and L.G.A., 1929, sect. 31.	M. of T.	Minister to consider representation of borough council and, on request, hold public inquiry.
Determination of date of exercise of rights of maintenance of county roads by certain urban district councils.	L.G.A., 1929, sect. 32 (3).	M. of T.	To be laid before Parliament.
Declaration, on refusal of county council to confirm order under sect. 15 of Highways and Locomotives (Amendment) Act, 1878, that a highway shall be a county road.	L.G.A., 1929, sect. 27.	M. of T.	Local inquiry at request of county council. Order to have effect as if made and confirmed under sect. 15, Highways and Locomotives (Amendment) Act, 1878.
Prohibition or restriction of driving vehicles on specified roads. (See also sect. 29 of Road and Rail Traffic Act, 1928.)	R.T.A., 1930, sect. 46.	M. of T.	Inquiry, if Minister thinks fit.
Alteration of limits, etc., of traffic areas.	R.T.A., 1930, sect. 62.	M. of T.	To be laid before Parliament and may be annulled by resolution of either House.
Increase or reduction of speed limit in built up areas.	R.T.A., 1934, sect. 1.	M. of T.	To be laid before Parliament. Order of no effect until approved by resolution of each House.
Adoption or alteration of a standard width for roads (on failure of highway authority to pass resolution).	R. of R.D.A., 1935, sect. 1 (4).	M. of T.	Order deemed to be a resolution of the highway authority. See also sect. 18 (2), 19 (4). [127]

Subject-Matter of Order.	Authorising Act and Section.	Order-making Authority.	Points to be noted.
"Consent" of highway authority. Decision of appeal against decision of highway authority to withhold any consent or to impose any condition. Removal of restrictions as respects any road.	R. of R.D.A., 1935, sect. 7 (4). R. of R.D.A., 1935, sect. 12.	M. of T. M. of T.	Order made after consultation with Minister of any other Government department concerned. Application of highway authority or council of county district.

TOWN PLANNING
TOWN AND COUNTRY PLANNING ACT, 1932

Subject-Matter of Order.	Authorising Section.	Order-making Authority.	Points to be noted.
Constitution of joint committee of two or more authorities for purposes of schemes. Revocation of resolution of local authority or joint committee. Interim development of land within area of proposed planning scheme. Compulsory purchase of land for garden cities on behalf of one or more local authorities or any authorised association. Requiring preparation, adoption and execution of scheme by authority. Applying provisions of 1932 Act to schemes made, for particular purpose, under repealed enactment.	Sect. 4. Sect. 6 (4). Sect. 10. Sect. 35. Sect. 36. Sect. 52.	M. of H. M. of H. M. of H. M. of H. M. of H. M. of H.	Request of one or more authorities. Unless all assent, local inquiry held. Local inquiry if requested by authority within twenty-eight days of notification of Minister's proposal. General or special order. In case of acquisition for authorised association, order to be made before each House and approved by both Houses before confirmation by Minister. Local inquiry. General or special order.

MISCELLANEOUS. (Note : see MEMORANDUM prefixed to List of Subject-Matters, ante, p. 50)

ORDERS

57

Subject-Matter of Order.	Authorising Section in Act cited.	Order-making Authority.	Application of rural authority.	Points to be noted.
Investment of rural authority with urban powers.	(I.) PUBLIC HEALTH ACT, 1875 Sect. 276.	M. of H.	Application of rural authority. Published as Minister directs.	
Consent to proceedings under Part III. of Act of 1876. Determining by whom costs of appeal under sect. 12 of Act of 1876 are to be borne. As to costs of inquiries under the Act of 1876.	(II.) RIVERS POLLUTION PREVENTION ACT, 1876 Sect. 6. Sect. 12. Sect. 14.	M. of H. M. of H. M. of H.	{ M. of H. M. of H. Any such order may be made a rule of the High Court.	
Declaratory parts or sections of Act to be in force in an urban district or in any contributory place in a rural district. Empowering local authority to require fencing of lands adjoining streets.	(III.) P.H.A. AMENDMENT ACT, 1907 Sect. 3 (1). Sect. 31.	M. of H. M. of H.	Power to adapt local Act provisions. Application of local authority.	
Application to rural district of certain provisions of Act. Amendment or adaptation of local Acts, etc.	(IV.) P.H.A., 1925 Sect. 4 (2), (3). Sect. 6.	M. of H. M. of H.	Notice in newspapers, then application to Minister. Application of local authority.	
Extending list of processes specified in sect. 334 of P.H.A. 1875, as excluded from certain provisions of that Act as to smoke.	(V.) SMOKE ABATEMENT ACT, 1926 Sect. 1.	M. of H.	Provisional order.	[129]

Subject-Matter of Order.	Authorising Section in Act cited.	Order-making Authority.	Points to be noted.
Extension of provisions of Alkali, etc., Works Regulation Act, 1896, sect. 27.	Sect. 4.	M. of H.	Local inquiry. Consultation with local authorities, etc. Order to be laid before Parliament, etc. Default of local authority, etc. Local inquiry. County council authorised to carry out duties.
Orders in respect of smoke nuisances under sect. 92 of P.H.A., 1875.	Sect. 1.	M. of H.	
			(V.L.) P.H.A., 1936
Constitution of Port Health District and Port Health Authority.	Sect. 2.	M. of H.	Power to include consequential and supplemental provisions (sect. 9). Power to include consequential and supplemental provisions (sect. 9).
Constitution of United District for purposes of Public Health and Joint Board.	Sect. 6.	M. of H.	With consent of councils concerned. Power to include consequential and supplemental provisions (sect. 9).
Constitution of Joint Board of two or more councils of counties or county boroughs.	Sect. 8.	M. of H.	
Variation or dissolution of special purpose area.	Sect. 12.	M. of H.	
Extension of period during which certain offensive trades by-laws shall remain in force.	Sect. 108.	M. of H.	
Empowering local authorities in certain circumstances to supply water outside their district.	Sect. 113.	M. of H.	
Decision on appeal against refusal of local authority in relation to water charges.	Sect. 126.	M. of H.	
Direction that certain expenses of county councils in connection with tuberculosis shall be special county expenses.	Sect. 174.	M. of H.	
Constitution of Advisory Committee re treatment of tuberculous seamen.	Sect. 175.	M. of H.	
Direction that certain expenses of county councils in respect of prevention and treatment of blindness shall be special county expenses.	Sect. 176.	M. of H.	
Directing delegation of powers re nursing homes by county council to council of county district, on refusal of county council.	Sect. 194.	M. of H.	Representation from council of county district aggrieved.

	M. of H.	To be laid before Parliament. Amendment or adaptation of local Acts to conform with P.H.A., 1896. Dissolution of isolation hospital committees. Declaring local authority to be in default in exercises of functions and, if necessary, transferring functions to county council or Minister. Variation, etc., of orders relating to defaults. Amendment of Middlesex County Council Act, 1891, to conform with amendment of general law.
Sect. 200.	M. of H.	
Sect. 313.	M. of H.	
Sect. 315.	M. of H.	
Sect. 322.	M. of H.	
	M. of H.	
Sect. 325.	M. of H.	
Sect. 336.	M. of H.	

[131]

ORDERS OF LOCAL AUTHORITIES

Power to make Orders.—Powers may be conferred by statute upon local authorities to make orders. This form of legislation is steadily increasing. For the power of local authorities to make bye-laws, see title **BYE-LAWS**. As to the subject-matter of these orders, see “Different types of Orders,” *supra*.

Examples of the powers of a local authority to make orders are to be found in the following statutes: Infectious Disease (Prevention) Act, 1890, sect. 4 (a); P.H.A. Amendment Act, 1907, sects. 17 (1), 80 (b); P.H.A., 1925, sects. 18, 30, 32, 68 (c); Road Traffic Act, 1930, sect. 47 (d); Housing Act, 1936, sects. 11, 16, 26, 29, 46, 169 (e); Town and Country Planning Act, 1932, sects. 14, 15, 17, 25 (f); L.G.A., 1933, sects. 35, 37, 38, 41, 43—45, 51, 141, 168 (g); Road Traffic Act, 1934, sect. 1 (4) (h); Restriction of Ribbon Development Act, 1935, sects. 18, 16 (i). [182]

The power of local authorities to make orders is not absolute. It is frequently modified by the right of persons aggrieved to have the order reviewed by a court of summary jurisdiction, and further limitations upon the power are supplied by the frequent necessity of consultation with other bodies, public notice of the intention to make the order, a public local inquiry where there are objections, and finally in a large number of instances where the purpose of the order is legislative, of the consent of a Government department.

Thus orders of a local authority under sect. 1 (4) of the Road Traffic Act, 1934 (k), are made after publication in local newspapers of intention, and consultation with the Chief of Police of the area concerned, and require the consent of the Minister of Transport, while similar orders in the London Traffic Area are issued after public notice and consultation with the London and Home Counties Traffic Advisory Committee. [183]

An appeal against an order of the local authority may lie to a court of summary jurisdiction or to a county court, as, for example, under sect. 15 of the Housing Act, 1936 (l), which provides for an appeal to the county court against an order of the local authority for the demolition or closing of premises unfit for human habitation. [184]

Methods of Control.—Under the Act authorising the local authority to make the order (apart from purely administrative orders), the authority is usually subject to some form of control, such as that provided by the “confirmation” or “approval” of the order by the Minister or other head of a Government department, and in certain cases copies of the order when made must be sent to the head of certain Government departments. Apart from this departmental control, power is expressly given under certain enactments for the testing of the validity of certain orders by the courts. For examples of these methods of control see *infra*.

Under sect. 37 of the L.G.A., 1933 (m), in the case of orders of a county council with regard to the division of an urban district into wards, the county council may direct a local inquiry to be held into the

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| (a) 13 Halsbury's Statutes 518. | (b) <i>Ibid.</i> , 916, 940. |
| (c) <i>Ibid.</i> , 1120 <i>et seq.</i> | (d) 23 Halsbury's Statutes 645. |
| (e) 29 Halsbury's Statutes 574, 579, 585, 588, 601, 672. | |
| (f) 25 Halsbury's Statutes 488 <i>et seq.</i> | (g) 20 Halsbury's Statutes 321 <i>et seq.</i> |
| (h) 27 Halsbury's Statutes 536. | (i) 28 Halsbury's Statutes 91, 275. |
| (k) 27 Halsbury's Statutes 586. | (l) 29 Halsbury's Statutes 577. |
| (m) 26 Halsbury's Statutes 322. | |

proposals of the U.D.C. after giving notice thereof in the prescribed form to certain authorities, Government departments, etc. See title *INQUIRIES*.

The county council are required to publish in a local newspaper a notice that the draft order has been prepared, that a copy will be kept open to inspection, and that representations may be made with respect thereto within six weeks of the notice. A copy of the order, when made, must be sent to the Secretary of State and to the Minister of Health (*n*). [185]

In the case, however, of orders for the division of a parish into wards, under sect. 52 of the L.G.A., 1933 (*o*), the only obligation of the county council that can be regarded as in the nature of control, is that of sending to the Secretary of State and the Minister of Health a copy of the order under sect. 56 of the Act (*n*). [185]

Confirmation by Minister or other Head of a Government Department.—Certain orders of local authorities, such as compulsory purchase orders for the acquisition of land under various enactments such as the Housing Act, 1936, and the Restriction of Ribbon Development Act, 1935, need confirmation by the Minister of Health, the Minister of Transport, etc. In certain cases the enabling statute contains provisions dealing with the procedure to be followed in the making and confirmation of such orders, and sects. 161, 162, 174, 175 and 179 of the L.G.A., 1933 (*p*), contain general provisions applicable to compulsory purchase orders which require confirmation by the Minister of Health. Examples of other orders requiring confirmation are clearance orders under the Housing Act, 1936 (Minister of Health), and certain orders under the Shops Acts (Secretary of State). [186]

Approval of Minister.—The approval of the Minister is sometimes required to orders of a local authority. Thus orders for the extinguishment of public rights of way under sect. 46 of the Housing Act, 1936 (*q*), require the approval of the Minister of Health. The section also provides for the procedure in the case of objections made and not withdrawn. [For further instances of "approval," and "confirmation," see list of subject-matters, *post*, p. 65.] [187]

Control of Courts.—Apart from the safeguards against abuse or objectionable exercise of its powers by a local authority, provided by the publicity and notices required in the case of many orders, certain enactments provide machinery for testing their validity. Thus, in the Second Schedule to the Housing Act, 1936 (*r*), it is provided that any person wishing to contest the validity of a clearance order or compulsory purchase order under the Act may apply to the High Court within six weeks after the publication of the notice of confirmation, but no appeal lies to the House of Lords from a decision of the Court of Appeal under that section, except by leave of that court. [188]

Consultation with Outside Bodies.—It is frequently provided that local authorities before making orders under any enactment shall consult with outside bodies whose functions are of such a nature as to be helpful to the authority. See, as to this, "Power to make Orders," *ante*, p. 60. [189]

Administrative Orders.—Purely administrative orders of a local authority require no confirmation by the Minister of any department,

(*n*) L.G.A., 1933, s. 56; 26 Halsbury's Statutes 333.
 (*o*) 26 Halsbury's Statutes 331. (*p*) *Ibid.*, 394 *et seq.*
 (*q*) 29 Halsbury's Statutes 601. (*r*) *Ibid.*, 687.

though it is not always easy to differentiate between administrative and executive functions of many orders. Thus orders under the following sections of the P.H.A., 1925 (s), viz. sect. 18 (1) (naming of streets); sect. 30 (new streets); sect. 32 (width of new streets); sect. 68, extended by sect. 16 of the Restriction of Ribbon Development Act, 1935 (t) (parking-places), are within the former category. Further examples are orders under sect. 80 of the P.H.A. Amendment Act, 1907 (u), as to leading or driving animals in streets. [140]

Different Types of Orders of Local Authorities. (a) *Under the P.H.A.*—Many orders, other than those which are purely administrative, made under Acts previous to the Act of 1936, though in effect orders of local authorities, are orders of justices, and in many cases the form of the order was fixed by the Schedule to the Act authorising the order. [141]

P.H.A., 1875.—Orders that previously to the coming into force of the P.H.A., 1936, could be made under a specific section of the 1875 Act, have been brought since October 1, 1937, under some general provision. Thus orders under sect. 102 (a) (entry of abatement of nuisances), will now be made under sect. 287 of the 1936 Act (b), while those under sect. 142 of the 1875 Act (c) (obstruction of a justices' order for removal of a dead body to a mortuary) will in future be made under sect. 288 of the 1936 Act (penalty for obstructing execution of Act). [142]

P.H.A. Amendment Act, 1890.—Justices' orders under sect. 17 (2) (d) (admission to premises) are covered by sect. 287 of the Act of 1936 (b). Orders for the destruction of unsound food under sect. 28 of the Act of 1890 (e) may still be made under that section, which is unrepealed by the Act of 1936. ("Food and Drugs" provisions will be contained in a future Act; see the Second Interim Report of the Local Government and Public Health Consolidation Committee, issued in January, 1936.) [143]

Infectious Diseases (Prevention) Act, 1890.—Orders of justices giving a M.O.H. power to inspect dairies are not affected under the P.H.A. of 1936. For orders for burial of bodies (under sect. 10), see sect. 162 of the Act of 1936 (f) and for those under sect. 12 (detention of infected persons), see sect. 170 of that Act (g). [144]

(b) *Orders of County Councils affecting other Local Authorities.*—As a result of the increase of the powers of county councils in relation to other local authorities, this type of order is becoming more common. Orders of this nature contained in the L.G.A. of 1894, together with new orders under the Act, now come under the provisions of the L.G.A., 1933. They are largely concerned with the constitution of, and elections in, local government areas, and the alteration of such areas. By sect. 56 of the Act a copy of every order made under Part I. (Constitution and Elections, Local Government Areas) must be sent to the Secretary of State and to the Minister of Health (h). [145]

(s) 13 Halsbury's Statutes 1120 *et seq.* (t) 28 Halsbury's Statutes 275.
 (u) 18 Halsbury's Statutes 940. (a) *Ibid.*, 665.
 (b) 29 Halsbury's Statutes 507. (c) 18 Halsbury's Statutes 682.
 (d) *Ibid.*, 830. (e) *Ibid.*, 835.
 (f) 29 Halsbury's Statutes 438. (g) *Ibid.*, 442.
 (h) L.G.A., 1933, s. 56; 26 Halsbury's Statutes 333, reproducing s. 71 of the 1894 Act.

Orders of county councils with regard to the alteration of areas are dealt with in Part VI. of the Act of 1933 (*i*), and general directions with regard to such orders are contained in sects. 148 and 149.

Sect. 148 provides, *inter alia*, that an order made under any part of the Act may contain such incidental, consequential or supplemental provisions as may appear to be necessary for the purpose of giving full effect to the order. It further provides that any scheme or order which provides for the extension of any provision relating to a gas or electricity undertaking contained in a local Act or statutory order, or for the exclusion of any part of an area from the application of any such provision, is not to be made or confirmed by the Committee of Council or the Minister except with the consent of the Board of Trade or the Minister of Transport as the case may require. Sect. 149 provides for amending orders. [146]

(c) *Orders of a Local Authority (as Responsible Authority) in connection with Schemes.*—By sect. 14 of the Town and Country Planning Act, 1932 (*k*), provisions may be inserted in any scheme under that Act empowering responsible authorities to make orders (*l*), or to adopt orders proposed by owners of land affected, for supplementing the provisions of any scheme. Further, under sect. 15 (*k*), a responsible authority may make an order permitting building operations to proceed, subject to certain specified conditions, pending the coming into operation of a general development order under that section. In such a type of order the responsible authority has a discretionary power which is not present in (*a*) and (*b*), *supra*. [147]

Methods of Lesser Authority to Obtain Order. Proposals to Superior Authority.—The general method by which an inferior authority is enabled to obtain an order from a superior one is by the submission of proposals. Thus, under sect. 37 of the L.G.A., 1933 (*m*), proposals may be made by an U.D.C. to a county council for the division of its district into wards, or alteration of existing wards. If the county council considers that a *prima facie* case has been made out by the authority making the proposals it will cause a local inquiry to be held. The procedure then followed has already been described; see "Methods of Control," *ante*. Though the draft order must be published in manner provided by the section, the county council may make the final order with or without modifications. Where, as a result of proposals from local authorities, alterations of urban or rural districts and parishes are made by order of a county council, confirmation by the Minister, with or without modification, is required by sect. 141 of the Act. [148]

An order of a county council directing that parish councillors or councillors for the wards of a parish shall be elected by nomination and, if necessary, by a poll, may be made on a simple request (*n*). Such an order may be revoked by the county council on application made by the parish council or parish meeting. An order of a county council for the division of a parish into wards for the election of parish councillors may be made on receipt of proposals made by the parish council or by not less than one-tenth of the local government electors (*o*). Again,

(*i*) Ss. 129—155; 26 Halsbury's Statutes 374—391.

(*k*) 25 Halsbury's Statutes 488.

(*l*) See s. 11 (2); *ibid.*, 485.

(*m*) 26 Halsbury's Statutes 322.

(*n*) L.G.A., 1933, s. 51; 26 Halsbury's Statutes 331.

(*o*) *Ibid.*, s. 52.

though orders for grouping parishes, dissolving groups or separating a parish from a group can be made under sect. 45 of the Act of 1933, such orders may contain such incidental, consequential and supplemental provisions as seem necessary to the county council for bringing the order into operation and giving effect thereto (p).
[149]

Complaint of Default.—Where a R.D.C. have failed to exercise their powers under the Housing Act, 1936, a parish council or parish meeting, or a justice of the peace acting for the same, or four or more local government electors of any such district, may make complaint of such default and the county council may cause a public local inquiry. The procedure followed is that under sect. 169 of the Act (q), and the council may apply sect. 68 of the L.G.A., 1894 (r), and make an order declaring that the district is in default and transferring its powers.
[150]

Methods of Private Persons to Obtain Orders.—If on an application for a consent which a highway authority have power to give under sects. 1 and 2 of the Restriction of Ribbon Development Act, 1935 (s), a person is aggrieved by the highway authority's withholding the same, or imposing a condition, he may, under sect. 7 (4) of the Act, appeal to the M. of T., who, after consultation with the Minister of any other department, may make such order as he thinks fit, and the Minister's decision is final.

A private person, as owner, can *apply* under sect. 82 of the P.H.A., 1925 (t), for an order of the local authority permitting him to widen a highway, adjacent to his building operations, to a less width than the prescribed width. There is, however, no appeal to quarter sessions against the withholding or refusal of a local authority of an order under that section. Notice of the proposed order must be sent by the local authority to the owner concerned, twenty-one days before made.
[151]

Owners of buildings in respect of which an order for preservation has been made under sect. 17 of the Town and Country Planning Act, 1932 (u), can make application to the council concerned for an order to vary or revoke the order.

Where under the Town and Country Planning Act, 1932 (u), or any scheme comprised in it, an appeal lies to the Minister, or any question is to be determined by him, the persons concerned can agree in writing to refer the matter to an agreed arbitrator, or, in default of agreement, to an arbitrator appointed by the Minister himself. In such a case the Minister or arbitrator has power to make any order that could have been made by a court of summary jurisdiction or by the Minister (a).
[152]

List of Subject-Matters.—The following is a list of the principal matters which may be dealt with by means of orders of a local authority.

(p) L.G.A., 1933, s. 46; 26 Halsbury's Statutes 328.

(q) 29 Halsbury's Statutes 672.

(r) 10 Halsbury's Statutes 816.

(s) 28 Halsbury's Statutes 81.

(t) 18 Halsbury's Statutes 1127.

(u) 25 Halsbury's Statutes 490.

(a) S. 40 (2), (3); 26 Halsbury's Statutes 510.

ORDERS

65

Subject-Matter of Order.	Statutory Authority.	Order-making Authority.	Points to be noted.
Compulsory purchase by local authorities authorised to do so by statute.	(I.) ACQUISITION OF LAND L.G.A., 1935, Local authority, sect. 161.	In prescribed form. Must be submitted to Minister for confirmation. Section supplies procedure in case of objections (local inquiry, etc.).	
Compulsory purchase by county council on behalf of parish council.	L.G.A., 1935, County council, sect. 168.	Representations to county council. Local inquiry, etc. Confirmation by Minister.	
Compulsory purchase of land for road purposes.	R. of R.D. Highway authority, 1935, sect. 13 (1).	Confirmation by Minister of Transport. L.G.A., sect. 161; procedure applied.	
Compulsory purchase of land for bridge construction or road drainage.	R. of R.D. Highway authority, 1935, sect. 14.	Subject to such condition as Minister of Transport considers necessary.	
Compulsory purchase.	Housing Act, 1936, sect. 14.	Applies provisions in First, Second and Fourth Schedules to Act to compulsory purchase orders under Part V.	
Denstitution of insanitary house.	(II.) HOUSING ACT, 1936		
Closing part of a building as unfit for human habitation.	Sect. 11. Local authority.		
Charging order on completion of works.	Sect. 12. Local authority.	See sect. 21 for form of order.	
Demolition of buildings in a clearance area.	Sect. 20. Local authority.	See provisions of Third Schedule. To be submitted to Minister of Health for confirmation.	
Compulsory purchase of land in, surrounded by or adjoining a clearance area.	Sect. 26. Local authority.	See Provisions of First Schedule. To be submitted to the Minister of Health.	
Compulsory purchase of land for redevelopment purposes.	Sect. 29. Local authority.	On approval by Minister of Health of redevelopment plan.	
	Sect. 36. Local authority.		[153]

Subject-Matter of Order:	Statutory Authority:	Quo-de-making Authority:	Points to be noted.
Extinction of public rights of way, etc.	Sect. 46.	Local authority.	With approval of Minister of Health.
Demolition of obstructive buildings.	Sect. 54.	Local authority.	For effect of, see sect. 55.
Alteration of urban or rural districts and parishes, etc.	L.G.A., 1933, sect. 141.	County council.	Proposals of local authority or otherwise. Local inquiry to be held. Confirmation by Minister. Application of parish meeting. Copy to be sent to Minister.
Confering functions of parish council on parish meeting.	L.G.A., 1933, sect. 273.	County council.	
Extinction of rights of way, etc.	Housing Act, 1936, 46.	Local authority (councils of county boroughs and county districts),	Approval of Minister. Publication and sometimes local inquiry.
Direction that length of road is not road in built-up area.	Road Traffic Act, 1934, sect. 1 (4)(a).	Local authority (councils of counties, county boroughs and non-county boroughs, and urban districts of over 20,000 population).	(V) ROADS AND ROAD TRAFFIC. (See also STREETS) Public notice of intention. Consultation with chief of police.

ORDERS

67

Approval of Minister if in force longer than three months.

Right of appeal to Minister.

Extension of sect. 68 of P.H.A., 1925.

May be ordered or revoked by subsequent order.

Temporary prohibition or restriction of traffic on roads.

Road Traffic Act, 1930,
sect. 47
R. & R.D.
Act, 1935,
sect. 10.

Provision of parking places and means of access.

Variation of intended position, direction, termination or
use of new streets.

Alteration of names of streets.

Declaration that a highway is a new street.

Permit to owner to widen highway to some width less
than that prescribed by by-laws for new streets.

Authorisation of use of part of street as parking place.

P.H.A. Amend.
Act, 1907,
sect. 17 (1).

P.H.A., 1925,
sect. 18 (1).

P.H.A., 1925,
sect. 30.

P.H.A., 1925,
sect. 22.

P.H.A., 1925,
sect. 68.

Local authority.
Urban authority.
Local authority.
Local authority.
Local authority.
Local authority.

Notice on site.
Power of appeal to petty sessions against intended order.
Notice pasted in street.
Appeal to Q.S., against order.
Twenty-one days notice of proposed order to owners.
Notices in newspaper and on land affected.
Appeal to petty sessional court.

(VII) STREETS, NEW STREETS

T.C.P. Act,
1932,
sect.
14.

T.C.P. Act,
1932,
sect.
15.

T.C.P. Act,
1932,
sect.
17.

T.C.P. Act,
1932,
sect.
25.

Powers not exercisable where compliance entails pur-

chase of additional lands by owners.

Notice on site.

Power of appeal to petty sessions against intended order.

Notice pasted in street.

Appeal to Q.S., against order.

Twenty-one days notice of proposed order to owners.

Notices in newspaper and on land affected.

Appeal to petty sessional court.

(VIII) TOWNS PLANNING

Responsible authority or
other local authority.

Responsible authorities.

Councils of counties,
county
boroughs,
districts.

Responsible authority.

May be revoked or varied.

Approval of Minister with or without modification.

May be revoked or varied.

Approval of Minister after consultation with Com-

missioners of Works.

Procedure for making, confirmation, etc., contained in

Third Schedule.

[155]

Subject-Matter of Order.	Statutory Authority.	Order-making Authority.	Points to be noted.
Declaration of additional offensive trades in borough, district or contributory place.	(VIII.) P.H.A., 1936 *	Local authority.	Confirmation by Minister of Health.
Extension of list of notifiable diseases.	Sect. 107.	Local authority.	Unless order is temporary, approval of M. of H. required.
Prohibition of housework on premises where notifiable disease exists.	Sect. 147.	Local authority.	Order may apply to certain classes of work.
Nursing homes, refusal to register applicant.	Sect. 153.	Local authority.	
Cancellation of registration of person in respect of nursing home.	Sect. 187.	Council of county or county borough.	
Removal to hospital of inmate of common lodging-house, suffering from notifiable disease.	Sect. 188.	Council of county or county borough.	
	Sect. 244.	Local authority.	
(IX.) SHOPS (SUNDAY TRADING RESTRICTIONS) ACT, 1936			
Allowing shops to open on Sundays for purposes of certain transactions.	Sect. 2.	Local authority.	
Allowing limited Sunday opening of shops in certain areas in London.	Sect. 8.	Common council of City of London or L.C.C.	

[56]

* Note.—As to orders under Acts repealed by the 1936 Act, which comes into force on October 1, 1937, see sect. 346 (1) (e), under which orders in force are continued.

ORDNANCE SURVEY

	PAGE	PAGE
INTRODUCTORY - - -	69	ORDNANCE MAPS AND LOCAL AUTHORITIES - - -
USE OF ORDNANCE MAPS IN LEGAL PROCEEDINGS - - -	69	70

Introductory.—By the Ordnance Survey Act, 1841, facilities were given to enable the Master-General and Board of Ordnance to make surveys of England, Scotland, Berwick-on-Tweed, and the Isle of Man, including the necessary power to enter, etc., estates for that purpose, and by sect. 1 of that Act (a) the persons appointed to make the survey were to ascertain the boundaries of counties, cities, boroughs, towns, parishes, burghs royal, parliamentary burghs of regality and barony, extra-parochial and other places, districts and divisions in England. By various substitutions the powers and duties of the Master-General etc., in this connection became eventually vested in the Minister of Agriculture and Fisheries (b), and are now performed by the Ordnance Survey Department. [157]

Use of Ordnance Maps in Legal Proceedings.—There is no power in the 1841 Act for settling boundaries, but merely for ascertaining those existing by repute, and unless an ordnance survey map is referred to in the title deeds it is not admissible as a public document to prove matters arising out of boundary, etc., disputes, and thus is not in general admissible between individuals as evidence of title or otherwise (c). Such maps are, however, admissible to show general geographical facts, i.e. as quasi-public documents and to explain conveyances, when referred to in title deeds.

Ordnance survey maps have been held admissible for the following purposes : As *prima facie* evidence of existing fences, tracks, etc., visible to the surveyor at material dates (d), or of a bridge and fence (e); to show the general position of a particular place or district (f), or the condition of a district (g) and to prove distances (h). An ordnance survey map was admitted in an Irish case (i) upon a matter of public or general interest, but a similar map was rejected in an English case (k). [158]

Ordnance survey maps are not admissible generally in public

(a) 2 Halsbury's Statutes 117.

(b) M. of A. & F. Act, 1819 ; 3 Halsbury's Statutes 451.

(c) See *Bidder v. Bridges* (1885), 34 W. R. 514 ; 22 Digest 357, 3624.

(d) *Re the Antrobus*, [1905] 2 Ch. 188, 203 ; 22 Digest 126, 1024.

(e) *A.-G. and Croydon R.D.C. v. Moorsom-Roberts* (1907), 72 J. P. 123 ; 22

Digest 382, 3908.

(f) *Bristow v. Cormican* (1878), 3 App. Cas. 641, 664 ; 25 Digest 16, 131.

(g) *N. Staffordshire Rail. Co. v. Hanley Corp.* (1900), 73 J. P. 477, C. A. ; 22

Digest 382, 3909.

(h) *Mouflet v. Cole* (1872), L. R. 8 Exch. 32 ; 44 Digest 147, 150.

(i) *Giant Causeway Co. v. A.-G.* (1898), 5 New Irish Jurist Reports 301.

(k) *Bidder v. Bridges*, *supra*.

inquisitions, surveys, etc., on questions of private boundaries or titles (*l*), because the surveyor responsible for the map had no access to private title deeds (*m*). They have been held non-admissible as evidence of reputation to show the boundaries between lands of adjoining owners (*n*), or to explain a deed (*o*). In general, in disputes about public rights of way the evidence of ordnance survey maps was formerly inadmissible as evidence of the existence of a right of way, but not as evidence of the existence of a particular track. However, sect. 3 of the Rights of Way Act, 1922 (*p*), provides that before determining whether a way over or upon any land has or has not been dedicated as a highway, or the date upon which such dedication, if any, took place, any court or other tribunal can take into consideration *any* plan of the locality that is tendered in evidence, and the court is to give to it such weight as they think is justified by its antiquity, the status of its maker, and the custody in which it has been kept and from which it is produced. [159]

Ordnance Maps and Local Authorities.—The requirements of town and country planning necessitate use of ordnance survey maps, and a difficulty has arisen owing to the age of some of the maps. Difficulties have developed between the Ordnance Survey Department and local authorities as such maps are Crown copyright, and no one may reproduce any portion of such maps without the consent of the Controller of H.M. Stationery Office. Further, such maps are expensive. As a result of frequent representations to the M. of A. & F. by local authorities a departmental committee was appointed in May, 1935, with the following terms of reference, viz. (1) to consider what measures are necessary to accelerate revision to bring maps up to date and maintain them at a high level of accuracy, (2) to consider immediate steps in the meantime for revision to the extent necessary for the purpose of town and country planning schemes, (3) to review the scales and styles of the maps, and (4) to review the conditions upon which reproduction is permitted. [160]

Before the appointment of the departmental committee certain privileges of reproduction had been allowed to local authorities, but from July 1, 1918, all existing permission to reproduce the maps, or use them to prepare other maps was withdrawn, and royalties had to be paid after permission to use had been given. Local authorities requested permission to copy the maps without payment of royalty for use in matters connected with Parliamentary Bills and committees or for the illustration of transport, water, lighting, power and similar schemes. In 1925 such permission was given (*q*), but seems to have led to abuse, maps for private interests being reproduced without royalty and without acknowledgment. [161]

In December, 1932, revised regulations came into operation in respect of reproduction of maps by local authorities. Under these regulations there is no need to notify the Ordnance Survey Department when copying for office use or transmission to a Government department if the making is limited to not more than twelve sunprints, etc.

(*l*) But see *Spike v. Thompson* (1875), per BLACKBURN, J., [1882] W. N. 103.

(*m*) See *Coleman v. Kirkaldy*, [1882] W. N. 103; 7 Digest 316, 363.

(*n*) *Tisdall v. Parnell* (1863), 14 I. C. L. R. 1, 27, 28.

(*o*) *Wyse v. Leahy* (1875), 1. R. 9 C. L. 384; 17 Digest 375, 1.

(*p*) 25 Halsbury's Statutes 193.

(*q*) See the Interim Report of the Departmental Committee on Ordnance Survey, December 21, 1935, 3d. nec.

without employing an outside agency and where the words "Crown Copyright" have been added. In all other cases the survey must be notified and the acknowledgment inserted in the margin of the map. No royalty is charged for the use of ordnance survey maps in the preparation of plans or maps for internal convenience if not more than fifty copies are made and proper acknowledgment and notification made to the Ordnance Survey; if more than fifty copies, permission must be obtained and a small royalty paid. These privileges extend to a committee of a local authority or to a joint committee or joint body of a number of local authorities. [162]

The departmental committee have issued an Interim Report (*r*) in which they state that they fail to see any reason for the exemption of local authorities from the application of the ordinary copyright law in the case of ordnance survey maps. They recognise that local authorities may be put to considerable expense in bringing these maps up to date. The committee go on to say that from this point of view, it may appear hard if local authorities are called upon to pay royalty in so far as they reproduce their own material; but it must be borne in mind that without the survey their own work would be impracticable.

The committee also recommend (1) that an interim edition of the 1/2500 be produced for town planning purposes, (2) that after consultation between the departments concerned, revision should be arranged so that priority of treatment is given to areas in which the need for town planning is most pressing, (3) that tenders be obtained for the aerial survey of blocks selected so as to include the largest practicable proportion of ground in which there is an immediate need for town planning purposes or there is known to have been considerable change, (4) that new regulations be introduced providing for a uniform scale of royalties applicable to all users of ordnance survey copyright material.

An appendix to the Interim Report contains draft proposals as to the reproduction of ordnance survey maps. These cover matters such as application to reproduce, the payment of royalties, facilitation of urgent reproductions, applications for licences to the Director General of the Ordnance Survey, and the compounding of royalty payments in the case of local authorities and public utility undertakings. [163]

(*r*) December, 1935.

ORNAMENTAL GARDENS

See ESPLANADES, PROMENADES, AND BEACHES; GARDENS AND SQUARES; OPEN SPACES; PUBLIC PARKS.

ORPHANAGES, RATING OF

See RATING OF SPECIAL PROPERTIES.

ORPHANS' HOMES

See PUBLIC ASSISTANCE INSTITUTIONS.

ORPHANS' PENSIONS

STATUTORY CONDITIONS AS TO ORPHANS' PENSIONS	PAGE — — 73	VOLUNTARY CONTRIBUTOR	PAGE — 73
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*See also titles : NATIONAL HEALTH INSURANCE ;
OLD AGE PENSIONS COMMITTEES.*

The Widows', Orphans' and Old Age Contributory Pensions Act, 1925 (a), provided that pensions should be payable to orphans of persons insured under the National Health Insurance Act, 1924 (b), and initiated a scheme of contributory pensions for both widows and orphans. The Act of 1924 is now superseded by the Widows', Orphans' and Old Age Contributory Pensions Act, 1936 (c). In this Act "child" includes a step-child and, in relation to a man, an illegitimate child, whether his or his wife's, who was living with him at the time of his death and, in relation to a woman, includes her illegitimate child living with her at time of her death. "Orphan" means a child both of whose parents are dead. The word also includes an adopted child within the meaning of the Adoption of Children Act, 1926 (d). [164]

Orphans' pensions are of 7s. 6d. a week and are payable for the orphan children of "insured" married men and widowers, or of "insured . . ." widows, while under the age of fourteen, or between the ages of 14 and 16 if under full time instruction in a day school. In the latter case the child is reckoned as being of age up to the time on which he ceases to be under such instruction, or July 1st next following the date on which he attains the age of 16, whichever is the earlier.

(a) 20 Halsbury's Statutes 596.

(b) 20 Halsbury's Statutes 470, now superseded by the National Health Insurance Act, 1936 ; 29 Halsbury's Statutes 1064.

(c) 29 Halsbury's Statutes 1198.

(d) 9 Halsbury's Statutes 827. See title ADOPTION OF CHILDREN.

The pension is payable to the guardian or person having charge of the child (e).

Subject to the statutory conditions noted below, an orphan's pension is payable in respect of the orphan child (i.) of a man who, being a married man or a widower, dies after January 4, 1926, and is "insured" at date of his death, and has not attained the age of 70 before that date; (ii.) of a widow who dies after January 4, 1926, and is "insured" at the date of her death (f). [165]

Statutory Conditions as to Orphans' Pensions (g).—The following conditions must be complied with in the case of a person in respect of whose insurance an orphan's pension is payable:

(1) He must have been an insured person under the Insurance Acts at the time of his death, and must have been insured for 104 weeks and had 104 contributions paid for him since his last entry into insurance; and

(2) If four years have elapsed since his last entry into insurance, an average of 26 contributions must have been paid for each of the three contribution years preceding his death, or his 65th birthday, if he was over 65 at death. Weeks of sickness and genuine unemployment may count as contribution for this purpose.

(3) If the husband has been continually insured for 10 years on reaching the age of 60 or been entitled to an old age pension between the ages of 65 and 70, only condition (1) above needs to be satisfied.

Claim forms for orphans' pensions cannot be obtained at a post office. They will be sent from the M. of H. on receipt of the form on page 4 of leaflet W.P.O.O., issued at any post office, duly completed by the applicant. [166]

Voluntary Contributors.—In addition to the scheme outlined above, the Widows', Orphans' and Old Age Contributory Pensions (Voluntary Contributors) Act, 1937, permits persons not employed within the meaning of the National Health Insurance Act, to become special voluntary contributors to the scheme. Such persons must have an income not exceeding £400 a year in the case of a man or £250 a year in the case of a woman, of which not more than £200 a year in the case of a man, or £125 a year in the case of a woman, is unearned income. Such voluntary contributors may elect to become insured for the purpose of widows' pensions and orphans' pensions only. For a widow's or orphan's pension to become payable, 104 weeks must have elapsed and 104 contributions have been paid since the contributor entered into insurance. [167]

(e) National Health Insurance Act, 1936, s. 4 (3); 29 Halsbury's Statutes 1074.

(f) As to Insurance under the Insurance Acts, see National Health Insurance Act, 1936; 29 Halsbury's Statutes 1064.

(g) *Ibid.*, s. 5.

OUTDOOR RELIEF

	PAGE		PAGE
INTRODUCTORY - - - -	74	PROHIBITIONS - - - -	82
GENERAL OUTLINE - - - -	74	RELIEF IN KIND - - - -	83
CONTROL OF MINISTER OF HEALTH	75	RELIEF ON LOAN - - - -	83
LOCAL AUTHORITIES RESPONSIBLE	75	MEDICAL RELIEF - - - -	83
ADJUDICATING OFFICERS - - -	75	DISPENSING OF MEDICINES -	84
RELIEF ORDERED BY JUSTICES -	77	SUDDEN OR URGENT NECESSITY -	84
RELIEF TO ABLE-BODIED MEN -	77	NON-RESIDENT RELIEF - - -	85
RELIEF TO WIDOWS, AND WOMEN LIVING APART FROM THEIR HUSBANDS - - - -	78	BOOKS AND ACCOUNTS - - - -	85
RELIEF ON ACCOUNT OF SICKNESS - - - -	79	REGISTER OF OUTDOOR RELIEF -	86
BURIAL - - - -	79	RELATION TO UNEMPLOYMENT INSURANCE - - - -	86
INCOMES TO BE DISREGARDED - - - -	79	RELATION TO UNEMPLOYMENT ASSISTANCE - - - -	86
SUPERVISION OF RECIPIENTS - - - -	80	RELATION TO WORKMEN'S COMPENSATION - - - -	87
PERIODS FOR RELIEF - - - -	80	RELATION TO OLD AGE AND WIDOWS' PENSIONS - - -	87
DEPARTURES FROM REGULATIONS - - - -	81		
RULES FOR ADMINISTERING RELIEF	81		

See also titles :

CASE-PAPER SYSTEM ;
GUARDIANS COMMITTEE ;
POOR LAW OFFENCES ;
PUBLIC ASSISTANCE ;
PUBLIC ASSISTANCE COMMITTEE ;

PUBLIC ASSISTANCE IN LONDON ;
PUBLIC ASSISTANCE OFFICER ;
RECOVERY OF POOR RELIEF ;
RELEVING OFFICER ;
UNEMPLOYMENT.

Introductory.—In the early part of the eighteenth century, relief was prohibited to any person who refused to enter the poorhouse. It was enacted in 1796 that the overseers should, with the approval of the parishioners in vestries or of a justice of the peace, distribute relief to industrious poor persons at their homes in circumstances of temporary illness or distress and in respect of their families, although such poor persons refused to enter a poorhouse. Authority was also given to justices of the peace to exercise a "just and worthy discretion" to order relief in special cases for a period of not exceeding one month. Poor law authorities have generally given outdoor relief since the enactment of this statute, but opinion and practice as to the relief of the able-bodied has varied.

The Poor Law Act, 1927, consolidated the law as enacted in a large number of poor law statutes. It was repealed by the Poor Law Act, 1930, in consequence of the transfer of the functions of guardians to the councils of counties and county boroughs by the L.G.A., 1929. The statutory conditions governing the granting of outdoor relief are now to be found mainly in this Act and the Relief Regulation Order, 1930. In this title, unless otherwise indicated, any reference to an article of an order should be read as a reference to an article of this order, and any reference to a section of an Act as referring to a section of the Poor Law Act, 1930. [168]

General Outline.—The term "outdoor relief" is not expressly defined by the Act, but by sect. 45 (1) (a) it inferentially means

"relief . . . administered out of a workhouse either in money or by the provision of food or clothing, or partly in one way and partly in another." The more modern term is "domiciliary relief."

The officer most closely connected with the administration of outdoor relief is the relieving officer (*b*).

Outdoor relief mainly takes the form of weekly cash payments to persons in need according to the amount decided by the appropriate authority. Relief may be granted in kind, namely by goods, instead of cash, but this is less usual than it was a few years ago. It also includes domiciliary medical attendance, the supply of medical and surgical necessities, payment of funeral expenses, and the provision of lodgings or food or other necessities.

Outdoor relief, when given, should be carefully adapted to the needs of the case (*c*). [169]

Control of Minister of Health.—By sect. 1 of the Act (*d*) the Minister is charged with the general direction and control of the administration of relief to the poor, and this control is exercised by making rules, orders and regulations under sect. 136 of the Act (*e*). He has under sect. 45 express power to declare to what extent and for what period the relief to be given to able-bodied persons or to their families in any particular county or county borough, or in any part thereof, may be administered either in money or in kind. If a council departs from any such order in an emergency, the matter must be reported to the Minister within fifteen days together with the grounds for the departure and, if the relief has only been given in kind, it shall not be unlawful or subject to be disallowed. The order of 1930 is made under the Act, with special reference to the conditions of granting outdoor relief.

Another method of exercising control is by the appointment under sect. 9 of inspectors to visit and attend any meeting of a county or county borough council or committee or sub-committee held for the relief of the poor and to take part in the proceedings, but not to vote at the meetings. These inspectors attend meetings of guardians committees and relief committees throughout the country periodically to watch the administration of outdoor relief, but they do not exercise such close supervision as before the transfer of the poor law administration from the boards of guardians.

The Minister also exercises control by means of audit. See title AUDIT. [170]

Local Authorities Responsible.—The administration of outdoor relief is one of the functions of a county or county borough council, but the powers of the council are exercised normally by the public assistance committee appointed under sect. 4 (*f*). In counties the consideration and examination of applications for relief is a function of the guardians committee or a sub-committee thereof, subject to such general or special restrictions or conditions as the county council or, under delegated powers, the public assistance committee may from time to time impose (*g*).

(*b*) See title RELIEVING OFFICER.

(*c*) Local Government Board Circular, March 18, 1910.

(*d*) Poor Law Act, 1930; 12 Halsbury's Statutes 968.

(*e*) *Ibid.*, 1936.

(*f*) Poor Law Act, 1930; 12 Halsbury's Statutes 971. See title PUBLIC ASSISTANCE COMMITTEE.

(*g*) Poor Law Act, 1930, s. 5. See title GUARDIANS COMMITTEES.

In a county borough it is usual for the detailed administration of relief to be undertaken by relief sub-committees of the public assistance committee, and in county areas for this to be undertaken by relief sub-committees of the several guardians committees, but the constitution of such sub-committees is in the discretion of the council, unless the requisite powers are delegated to the public assistance committee for this purpose. [171]

Adjudicating Officers.—In some parts of the country decisions on applications for relief are given by adjudicating officers. Such an arrangement is not permissible under the general law and requires an order of the Minister of Health. In counties it is also necessary to obtain powers in this respect by a local Act in view of the express provisions in sect. 5 of the Poor Law Act as to administration by guardians committees.

The duties of an adjudicating officer as prescribed by the Minister of Health in any area are as follows : (a) to consider all applications for relief reported to him by a relieving officer and the relieving officer's reports thereon and, where practicable, interview applicants for relief ; (b) to determine, in accordance with the statutory provisions and any rules, orders or regulations made by the Minister in that behalf, and, subject thereto, in accordance with rules to be prescribed by the council for the purpose, the nature and amount of relief (if any) to be given to applicants for relief ; (c) to make orders for the grant of relief accordingly ; (d) to reconsider periodically, in accordance with any rules, orders or regulations made by the Minister in that behalf, and, subject thereto, in accordance with any rules prescribed by the council in that behalf, the cases of persons receiving relief, and to make any necessary orders with regard thereto ; (e) to report to the appropriate sub-committee all orders for relief made by him ; (f) to refer for consideration by the appropriate sub-committee such applications for relief reported to him by relieving officers and such cases due for reconsideration by him as, by rule or in his opinion, should be dealt with by the sub-committee ; (g) to refer to the appropriate sub-committee for review or consideration any case in which an applicant for relief or recipient of relief asks for reconsideration of the adjudicating officer's determination or proposed determination of his case. [172]

In this area the adjudicating officer also : (a) has power to visit, at his discretion, any applicant for relief in whose case he is called upon to adjudicate ; (b) has power to make grants of relief by way of loan ; (c) attends meeting of the sub-committee ; (d) reports to the sub-committee all cases in which relief has been discontinued or refused by him ; (e) makes no variation in orders made by the sub-committee, except there be a change in circumstances ; (f) reports to the public assistance committee upon all cases in which relief has been granted ; (g) determines, in accordance with such rules as may be prescribed by the council, the amounts (if any) to be paid by recipients of relief, or the persons liable for their maintenance, towards reimbursing the council the amount expended by them on relief ; (h) keeps a record of all determinations under the last preceding sub-paragraph, and report the same to the sub-committee ; (i) refers for consideration by the sub-committee such of the cases referred to in sub-paragraph (g) as in his opinion should be dealt with by the sub-committee, and also any cases falling within such classes as the council may from time to time direct ; (j) refers to review or consideration by the sub-committee every case in which any person affected by a determination made or

proposed to be made by the adjudicating officer under sub-paragraph (g) asks that the matter should be so dealt with. [173]

Relief Ordered by Justices.—There are two different circumstances in which outdoor relief may be ordered by a justice. Under sect. 79 (h), if any relieving officer refuses or neglects to give relief in any case of sudden or urgent necessity to any person not settled or usually resident in the county or county borough for which he acts, any justice of the peace may require him to give such temporary relief in kind as the case may require, and if the relieving officer disobeys any such order of the justice, he is liable on summary conviction to a fine not exceeding £5. This provision is a reproduction of a very old statute and may be considered to be obsolete in practice.

Under sect. 46 (i), a court of summary jurisdiction may direct that relief shall be given to any adult person who, from old age or infirmity, is wholly unable to work, without requiring him to reside in a workhouse, if such person is lawfully entitled to relief in the county or county borough and desires to receive outdoor relief. One of the justices constituting the court must certify that to his own knowledge the person is wholly unable to work. The justices' order cannot determine the amount of relief. This power is also really obsolete. [174]

Relief to Able-Bodied Men.—Although the relief of the able-bodied generally is now the function of the Unemployment Assistance Board where such men are not entitled to unemployment insurance benefit, and outdoor relief cannot be granted to any person in receipt of unemployment assistance benefit unless he is a person who by a decision for the time being in force has been decided not to be a person to whom Part II. of the Unemployment Act, 1934, applies (j), the public assistance committee is still responsible for some able-bodied men.

Under Art. 6, each council must formulate such arrangements as may be practicable for setting to work men who are capable and to whom outdoor relief is afforded and for training and instructing such men in some suitable form of useful work. In some parts of the country, such as London, this provision was used widely, before the transfer of the able-bodied to the Unemployment Assistance Board, and the power still exists, although it is not now so generally exercised. Where such an arrangement has been approved, any able-bodied man to whom outdoor relief is granted must, so far as the arrangements made by the council permit, be set to work, trained or instructed.

Except as provided by Art. 9, no able-bodied man may receive relief in respect of any period during which he is employed and in respect of which he receives wages or other remuneration.

The amount of outdoor relief to be given to an able-bodied man should be calculated on a lower scale than the earnings of the independent workman who was maintaining himself by work (k). [175]

The council is not authorised to grant outdoor relief to an able-bodied man who is able to obtain and perform work at wages sufficient for himself, wife and family; but the council is justified in relieving the wife and child of any such man who is reduced to destitution by the

(h) Poor Law Act, 1930; 12 Halsbury's Statutes 1007.

(i) *Ibid.*, 991.

(j) Unemployment Act, 1934, Sched. VIII., Part I., para. (c); 27 Halsbury's Statutes 822.

(k) M. of H. Circular, September 8, 1921. The obligation on a public assistance authority to "relieve destitution" is not affected by this expression of opinion.

man's refusal to accept work, because he is on strike for higher wages (*l*). On several occasions advice has been tendered by the Minister of Health to poor law authorities as to the action to be taken when destitution arises owing to an industrial dispute. The question for the consideration of a council on any application for relief made by a person who is destitute in consequence of such a dispute, is a question of fact, namely, whether the applicant for relief is, or is not, a person who is able-bodied and physically capable of work, whether work is or is not available for him, and if such work is not available for him, whether it is or is not so available through his own act or consent. Where the applicant for relief is able-bodied and physically capable of work the grant of relief to him is unlawful if work is available for him, or he is thrown on the council through his own act or consent. Penalties are provided (see title *Poor Law Offences*), although the council may lawfully relieve the dependants if they are in fact destitute. This, however, does not affect the duty of the council to relieve persons, who, as the result of continued unemployment or otherwise, are no longer physically able to perform work (*m*). [176]

In a later circular from the M. of H., consideration was given to (a) men who have been thrown out of work by a dispute affecting their rates of wages or conditions of labour, but who are not themselves members of any trade union engaged in a dispute and have taken no active part in the dispute; and (b) boys under the age of eighteen who are members of a trade union engaged in the dispute but under the rules of the union are debarred from voting, and, therefore, have no power to influence the union's decision. The Minister was advised as regards both these cases, that it lies with the public assistance authority to decide upon all the facts available whether a particular applicant is willing and able to perform work. If he has presented himself for work and this has been refused owing to the dispute, the applicant, if otherwise eligible, could lawfully be granted relief. If on the other hand he has withdrawn his labour because of the dispute he would not be eligible for relief. The fact that in the first class of case the applicant is not a member of a trade union engaged in the dispute is not a determining factor, nor in the second class of case is the fact that the boy, though a member of the union, has no voting rights and in consequence has no control over its policy (*n*).

Apart from the specific powers conferred by the general provisions of the Act and the order, specific power is given to any county or county borough council by sect. 70, to employ and set to work on the cultivation of land acquired by them for the purpose such persons as the council are required to set to work under the Act, and the council may pay to persons so employed by them, who are not in receipt of other relief, reasonable wages for their work. This provision may, however, be considered to be obsolete. It is a reproduction of a former poor law statute which it is believed has not been acted on for many years. [177]

Relief to Widows, and Women Living Apart from their Husbands.—Although many widows are entitled to allowances under the Widows', Orphans' and Old Age Contributory Pensions Acts, it has been emphasised by the M. of H. that care should be taken to point out to widows that outdoor relief can be granted to a pensioner, in addition

(*l*) *A.-G. v. Merthyr Tydfil Union*, [1900] 1 Ch. 516; 37 Digest 226, 188.

(*m*) M. of H. Circular, No. 1026; August 10, 1920.

(*n*) M. of H. Circular, No. 1192; April 24, 1931.

to the pension, in special circumstances (o). The earnings of widows and children should be taken into account when the relief is assessed, but it would be reasonable not to deduct the whole of such earnings from the relief which would have been afforded had the earnings not existed (p).

Where the husband of a woman is living apart from her, all relief given to her or to her child shall be considered and given to her in the same manner and subject to the same conditions as if she were a widow (q). [178]

Relief on Account of Sickness.—Outdoor relief must not be given to any person on account of sickness or infirmity unless a written statement of a medical officer of a poor law establishment or a district medical officer showing the nature of the disability is laid before the committee or sub-committee considering the application, provided that in the case of a person (1) who has not received relief under an order made at any time within the six weeks preceding the application; or (2) in respect of whom a statement has been submitted on the occasion of a previous application showing the disability to be of a permanent nature; or (3) who requires relief on account of infirmity arising from old age, the committee may grant relief without any such statement. In any case such a statement is only required where relief is given in money (Art. X.). It is not on the report of the medical officer alone that a committee should decide an application for relief. The function of the medical officer is to declare the existence of a particular disability and its degree; it is for the relieving officer to furnish the committee with the information necessary to enable them to determine whether the case is one which should receive relief (r). [179]

Burial.—Outdoor relief may be given for the purpose of defraying the expenses of burial. This may be arranged either by the councils giving directions for the funeral and paying the account, under sect. 75 of the Act (s), or by its affording outdoor relief to the person who may be bound by law to inter the body, for the purpose of enabling him to discharge that obligation. See also title BURIALS. [180]

Incomes to be disregarded.—It is an established poor law principle that outdoor relief must be granted only in case of need. The resources of the household must, therefore, be taken into account. There are, however, certain statutory exceptions to this rule. A council can grant outdoor relief to any person otherwise entitled to such relief notwithstanding that the person is in receipt of benefit from a friendly society and, in estimating the amount of relief to be granted, it is at the discretion of the council whether they will or will not take into consideration the amount received by him from such friendly society, but they must not take into consideration any sick pay except in so far as it exceeds 5s. a week (t). This provision has been extended to include trade union benefit (u). [181]

In granting relief to a person in receipt of, or entitled to receive, national health insurance benefit, the council may not take into consideration any such benefit except so far as it exceeds 7s. 6d. a week (a).

(o) M. of H. Circular, No. 642; November 12, 1925.

(p) M. of H. Circular, March 28, 1930.

(q) Poor Law Act, 1930, s. 18; 12 Halsbury's Statutes 970.

(r) Report of Departmental Committee on Poor Law Orders; December 20, 1910, para. 87.

(s) Poor Law Act, 1930; 12 Halsbury's Statutes 1005.

(t) *Ibid.*, s. 48 (1); 12 Halsbury's Statutes 991.

(u) Poor Law Act, 1934, s. 1; 27 Halsbury's Statutes 457.

(a) Poor Law Act, 1930, s. 48 (2); 12 Halsbury's Statutes 991.

It is considered that this section imposes on public assistance authorities the duty of disregarding such sick pay and national health insurance benefit up to the amount specified, both in determining whether the relief can be granted and in determining the amount of relief. The Minister of Health has expressed the opinion that sect. 48, as amended by the Act of 1934, only applies when the applicant for relief is himself entitled to national health insurance benefit, and that in granting outdoor relief to the undermentioned types of cases the whole of the benefit must be taken into consideration :

- (a) a wife whose husband (the insured person in respect of whose illness the benefit is payable) is in hospital ;
- (b) a husband whose wife is an insured person to whom national health insurance benefit is being paid ; and
- (c) a parent whose son or daughter (insured person) is in an establishment supported by any public authority or out of any public funds or voluntary subscriptions, when the applicant for relief is receiving the sum payable on account of benefit in respect of the son's or daughter's sickness (b).

Sect. 48 does not apply to maternity benefit, but in granting outdoor relief to any person a council shall not take into consideration any maternity benefit under the National Health Insurance Act, 1936, except any increase of such benefits by way of additional benefit and any second maternity benefit (c). [182]

In granting outdoor relief to any person, account shall not be taken of any wounds or disability pension received by any person whose resources are taken into account in relieving him, except in so far as it exceeds £1 a week (c). [183]

Supervision of Recipients.—There must be a close and careful supervision of all cases in which outdoor relief is granted. When once relief has been given, recipient should not be left without this supervision, since the circumstances of recipients vary no less than those of other persons, and the variation may result either in continuance of relief when there is no need of it, or, on the other hand, in hardship to the individual through insufficient or inappropriate relief (d).

The Royal Commission on the Poor Law and the Relief of Distress (1909) recommended that there should be close supervision of children in receipt of outdoor relief. It was suggested that the help of voluntary agencies might be enlisted for their supervision. [184]

Periods for Relief.—Outdoor relief must be administered not less frequently than once a week (e).

Outdoor relief must not be granted for a period exceeding :

- (a) in the case of an able-bodied man—8 weeks, but the relieving officer must make a report on the case to the committee immediately before the expiration of the first four weeks, and if the report discloses any material change in circumstances the committee shall forthwith take the report into consideration and make any new order which may be necessary ; and
- (b) in the case of any other person who has not received relief under an order made at any time within the six weeks preceding the application—8 weeks ;
- (c) in any other case—14 weeks (f). [185]

(b) Letter from Minister of Health to the Manchester Corp., May, 1935.

(c) Poor Law Act, 1934, s. 1 ; 27 Halsbury's Statutes 467.

(d) Local Government Board Circular ; March 18, 1910.

(e) Relief Regulation Order, 1930, Art. 11 (1).

(f) Relief Regulation (Amendment) Order, 1932 ; S.R. & O., 1932, No. 631.

Departures from Regulations.—If a council or public assistance committee departs from any regulations made by the Minister with regard to outdoor relief, the matter must be reported within seven days to the Minister. If a guardians committee or a sub-committee of the public assistance committee departs from any such regulation, the matter must be reported within three days to the public assistance committee. The council or public assistance committee must consider at each meeting any departure reported to them and if they disapprove thereof they must at once notify the committee or sub-committee concerned, and the relief ordered must thereupon cease. Any departure which has not been, or cannot by reason of the time of meeting be, considered by the council or public assistance committee within twenty-one days after the departure, and any departure which has been duly considered but not disapproved by the council or that committee must, within twenty-one days, be reported by the clerk to the Minister, and if the relief was given in a particular emergency wholly in kind, or in any case the relief was not given after notice from the Minister disapproving thereof, the relief granted will, if otherwise lawful, not be deemed to be unlawful and subject to be disallowed (g).

Art. 14 provides a method for dealing with cases requiring relief involving a contravention of the order, such as the supplementation of the wages of a young apprentice or the granting of outdoor relief unconditionally in an area where a scheme has been approved for setting men to work under Art. 6. [186]

Rules for Administering Relief.—The majority of public assistance authorities have adopted rules and regulations for the administration of outdoor relief. The adoption of such rules or regulations is within the discretion of the council of any county or county borough subject to general compliance with the provisions of the Poor Law Act and the 1930 order, and does not require any approval of the Minister of Health. Where such regulations include a scale of relief, the scale must not be applied automatically, and does not make it unnecessary to consider each case. It is usual for the scales to specify the general standard of amounts for measuring the needs of an applicant according to the number of dependants in the family. Provision must also be made for an allowance in respect of rent. Some councils have a maximum allowance for rent to avoid the risk of encouraging recipients of relief to pay excessive rents.

The scale in force in one area provides that additional relief shall be granted to such extent as may be considered reasonable for the provision of extra nourishment to sick persons and expectant and nursing mothers, if recommended by the district medical officer, or, in the case of recipients of relief suffering from tuberculosis, by the borough tuberculosis officer, or, in the case of women and delicate children who are in receipt of relief and are attending a borough council maternity and child welfare centre, by the medical officer of the centre, or, in the case of women in receipt of relief who are attending an ante-natal clinic at one of the council's hospitals, by the medical officer of the clinic.

It is usual for the regulations to provide what amount of the income of the household is to be regarded as available towards the support of the applicant and his dependants. [187]

In London the scale provides that the whole amount of the earnings

(g) Relief Regulation Order, 1930, Art. 14.

of the applicant, other than a widow, shall be regarded as available less actual fares to work and State insurance contributions.

In order to encourage a wife to seek work, a deduction of 2s. a week is allowed from her earnings by the London scale. Other income of the applicant or wife is to be deducted in full. The income of other members of the household is treated on a different basis. Where there is only one other member with income, one-half of the amount over 14s. a week is regarded as available ; where there are two other members with income, the allowance is one-half of the amount by which the income of each member exceeds 14s. a week, and where there are three or more other members with income, the allowance is one-half of the amount by which the income of each member exceeds 10s. a week.

Profit from lodgers is to be estimated on the facts of each individual case.

Money and investments are to be treated as capital assets and in the case of the applicant or his wife the whole amount derived therefrom is to be taken into consideration ; in the case of other members of the household, only the net income derived from money and investments is to be taken into account.

It should be understood that these regulations apply only in London, but they are similar to those in operation in some other places.

The London regulations provide that, save in exceptional circumstances, outdoor relief shall not exceed 45s. a week in any one case, or be granted so as to raise the total income of a household above 90s. a week.

In accordance with the practice prevailing generally throughout the country, extra relief in cash may be allowed at Christmas in respect of each adult and child in receipt of outdoor relief. [188]

Prohibitions.—It is prohibited to pay the rent, or any part of the rent, of the house or lodging of any person applying for relief, or to apply any portion of the relief granted in the payment of any such rent, or retain any portion of the relief for the purposes of directly or indirectly discharging the rent. This prohibition does not apply to any shelter or temporary lodging procured in any case of sudden or urgent necessity. Nor does it prevent a committee when determining the amount of relief to be afforded to any person, from considering the expense that will be incurred by the recipient in providing lodgings (*h*). The rent paid is on exactly the same footing, in so far as the needs of the applicant are concerned, as any other necessary expenditure ; the object of the article is not to prevent this from being considered, but to prohibit the establishment of any direct relationship in the matter of rent between the council and their officers and the landlord of the recipient. The council should satisfy itself that any part of the relief, which is given for the purpose of paying rent, goes to this purpose (*i*).

It is also prohibited (a) to establish any applicant for relief in trade or business, (b) to redeem from pawn for any applicant for relief any tools, implements, or other article, (c) to purchase for or give to any applicant any tools, implements, or other articles except such articles as are included in the expression "relief in kind," or (d) to give money to or on account of any applicant for the purpose of effecting any of these objects (*k*). [189]

(*h*) Relief Regulation Order, 1930, Art. 12.

(*i*) Local Government Board Circular, December 29, 1911.

(*k*) M. of H. Circular : September 8, 1921.

Relief in Kind.—It is in the discretion of the committee whether relief should be granted in any particular case in money or in kind, and by sect. 17 of the Act a relieving officer, acting under his statutory authority, may not give relief in money. "Relief in kind" means relief afforded by the grant of food, medicine, or other articles of absolute necessity, or by the provision of temporary lodgings (*l*). Where relief in kind is given it is usually administered by tickets on a tradesman, or, alternatively, it may be issued from the council's stores, or from one of its institutions. [190]

Relief on Loan.—Relief which is otherwise lawful may be granted on loan to or on account of any person above the age of twenty-one, either on his own account or on account of his wife or any member of his family under the age of sixteen (*m*). This regulation is made in pursuance of sect. 49 of the Act (*n*). Any relief granted by way of loan may be recovered in the county court, or by attachment of wages on the order of a justice. If any employer refuses or neglects to pay on any such order, the money is from time to time to be recoverable from him summarily as a civil debt (*o*).

There must be a contract with the person relieved for the repayment of the relief, as loaned, and an action under sect. 50 cannot be maintained if the relief was not so given (*p*).

A court of summary jurisdiction has no power to make an order under sect. 50 for the recovery of relief by way of loan (*q*).

A resolution passed by the authority cancelling the whole of the outstanding balances of relief on loan granted to wives and families of miners who were unemployed by reason of a coal strike without inquiring into the definite means of repayment is *ultra vires* (*r*). [191]

Medical Relief.—The expression "medical relief" means relief (other than institutional relief) afforded by the grant of medical or surgical assistance or of matters supplied by or on the recommendation of a medical officer (*s*).

It is the duty of a relieving officer, in any case of sickness or accident requiring relief by medical attendance, to secure such attendance by giving an order on the district medical officer or by such other means as the circumstances may require (*t*). As with other relief, medical relief can be given only if the recipient has not the means to obtain such help at his own expense. Medical relief may be given "on loan."

It is no answer to proceedings for failing to give relief to say that the applicant was earning wages, if at the moment of making the application he was destitute and without the means of procuring the necessary medical assistance (*u*). [192]

(*l*) Public Assistance Order, 1930, Art. 6.

(*m*) Relief Regulation Order, 1930, Art. 15.

(*n*) Poor Law Act, 1930, s. 49; 12 Halsbury's Statutes 992.

(*o*) *Ibid.*, s. 50.

(*p*) *L.C.C. v. Alford*, March 25, 1933 (the decision of the county court against the poor law authority was upheld in the Divisional Court on May 26, 1933, but the case is not reported). See also *per ATKINS*, L.J., in *Pontypridd Union v. Drew*, [1927] 1 K. B. 214; 37 Digest 229, 214.

(*q*) *Evans v. Morgan*, [1928] 2 K. B. 527; Digest Supp.

(*r*) *A.-G. v. Plymouth Union*, [1930] 1 Ch. 616; Digest Supp.

(*s*) Relief Regulation Order, 1930, Art. (2).

(*t*) Public Assistance Order, Art. 167 (10).

(*u*) *R. v. Curtis* (1885), 15 Cox, C. C. 746; 15 Digest 667, 7222.

If medical relief is required in any case of sudden or dangerous illness this may be ordered by a justice of the peace (*a*).

In any case of sickness or accident requiring immediate medical or surgical attendance, when the services of the district medical officer cannot be promptly obtained, the relieving officer should employ another medical practitioner and the council should pay him for such attendance if the person so attended was at the time in a destitute condition (*b*). The relieving officer should visit the case as soon as he is acquainted with it, and the medical officer should be directed to attend the case and relieve the other medical practitioner as soon as practicable (*c*). [193]

Dispensing of Medicines.—The arrangement for dispensing of medicines supplied by a district medical officer should be agreed on his appointment. The cost of dispensing may be included in his remuneration or the council may agree for the dispensing of prescriptions given by him either by any chemist or by a panel of chemists at the cost of the council.

Sects. 129 and 130 of the Act (*d*) empower the L.C.C. to appoint dispensers and provide dispensaries in connection with domiciliary medical assistance. Where such an arrangement is in existence the medicines, appliances and requisites for the care and surgical treatment of the sick poor relieved out of an institution must be dispensed and furnished on the prescription and written direction of the district medical officer, subject to such regulations as the Minister may by order direct. [194]

Sudden or Urgent Necessity.—In any case of sudden or urgent necessity the relieving officer must give such relief otherwise than in money as may be necessary (*e*). Reference has already been made to the responsibility of a relieving officer acting on an order of a justice, to grant relief in any case of sudden or urgent necessity to any person not settled or usually residing in the county or county borough for which the relieving officer acts (*f*). In relieving a case of sudden or urgent necessity the relieving officer may either give an order for institutional relief and, if necessary, provide a means of conveyance, or grant relief in kind (*g*).

On the responsibility of the relieving officer in cases where guardians have refused outdoor relief and given an order for the institution which the applicant has refused, the Local Government Board stated that when an offer of admission had been declined, the guardians would be free from responsibility for the consequences. While the Board thought it very undesirable that the guardians should grant regular relief in consequence of such refusal, they could not advise in such a case if the circumstances should become urgent that all relief should be withheld, and they thought the guardians should instruct the relieving officer to watch the case and to afford from time to time such temporary relief in kind as might be required to meet the actual necessities of the case. The same principle still applies now the functions of boards of guardians have been transferred to the councils of counties and county boroughs.

If the relieving officer doubts the *bona fides* of an applicant he should

(*a*) Poor Law Act, 1830, s. 17 (2); 12 Halsbury's Statutes 979.

(*b*) *Ibid.*, s. 17 (3).

(*c*) *Ibid.*

(*d*) *Ibid.*; 12 Halsbury's Statutes 1034.

(*e*) *Ibid.*, s. 17.

(*f*) *Ibid.*, s. 70.

(*g*) Public Assistance Order, 1930, Art. 21.

by means of appropriate questions endeavour to elicit the truth, and without delay make such other inquiries as may be expedient in all the circumstances (*i*).

The relieving officer affords relief in cases of sudden or urgent necessity (*i*) on his own responsibility, and the council has no control over the amount of relief in kind which he may give. He must satisfy the district auditor that the case was sudden or urgent, and that the relief afforded was proper in the circumstances. [195]

Non-Resident Relief.—The council may grant relief to a person who is not within the area under the same conditions as if he was living in the area, provided he is removable thereto. A council is not under any obligation to give non-resident relief, but if this is refused the council of the county or county borough in which the person is residing may obtain an order for his removal to the county or county borough in which he is settled.

Sect. 81 of the Act (*j*) contains express authority for the granting of non-resident relief to a widow who has a legitimate child dependent on her for support, and has no illegitimate child born after the commencement of her widowhood, and who at the time of her husband's death was resident with him in some place other than her county or county borough of settlement. [196]

Some councils have reciprocal arrangements as to the conditions under which non-resident relief may be granted. For instance, it is customary in some areas for such arrangements to provide that non-resident relief should not be granted to able-bodied men. A case is described as non-resident by the council of the county or county borough in which the person is settled and as non-settled by the council of the county or county borough in which the person is residing. The supervision of non-settled poor is the responsibility of the council for the area in which they are resident, but it is the practice of some councils to arrange for special visitation periodically by their own officers. Where a council undertake the responsibility of administering non-settled relief on behalf of another council, they should impress on their officers the importance of making themselves thoroughly acquainted with all the facts relating to the case and of exercising the same supervision as if the recipient were chargeable to their council (*k*). The relieving officer is required to keep a separate record in his outdoor relief list of the relief given by him to the non-settled poor (*l*). [197]

Books and Accounts.—A record of relief administered must be kept in the outdoor relief list (*m*). Statistics must also be kept in this book for the purpose of compiling the annual return of persons in receipt of relief required by the M. of H.

The other books and accounts required to be kept by a relieving officer are in the discretion of the council, but on the transfer of poor law functions to councils from boards of guardians it was generally considered advisable to follow the forms previously prescribed for relieving officers by the General Order for Accounts, 1867 (*n*).

(*i*) *Clark v. Joslin* (1873), 27 L. T. 762; 37 Digest 212, 86.

(*j*) Public Assistance Order, 1930, Art. 21.

(*l*) 12 Halsbury's Statutes 1007.

(*k*) Circular of Local Government Board; March 18, 1910.

(*l*) Public Assistance Order, Art. 167.

(*m*) Public Assistance Order, 1930, Art. 167.

(*n*) M. of H. Memo., January 20, 1930.

It is necessary that there should be proper records of the receipt of applications for relief and of the action taken thereon. The most usual method of recording these matters is by using an application report and relief order list in conjunction with the case paper system. See also title CASE PAPER SYSTEM. Under the 1867 order, it was necessary for there to be an application and report book containing a record of every distinct application made for relief, and a note of the decision or direction of the appropriate committee thereon, duly authenticated by the initials of the chairman or clerk. The application, report and relief order list was in a somewhat similar form and was kept in loose sheets, but where such an arrangement is in existence the sheets containing the original orders should be retained by the clerk or the public assistance officer, and not allowed to be in the possession of the relieving officer (o). [198]

Register of Outdoor Relief.—A register must be kept showing the name of every person in receipt of outdoor relief, together with such particulars in respect of the family as the Minister may direct (p). It is considered that the series of case papers may be regarded as this register as it is unusual for a separate book to be kept. No form is prescribed by the Minister. [199]

Relation to Unemployment Insurance.—In determining whether outdoor relief shall or shall not be granted to a person in receipt of or entitled to receive unemployment benefit, account must be taken of the amount of such benefit (q). In any case in which outdoor relief has been granted to a person not in receipt of benefit, recovery of any sum granted in excess of the amount which would have been granted if the person had been in receipt of benefit may (after benefit has been subsequently allowed) be claimed from the Ministry of Labour (r). Normally these cases would not now fall to public assistance but to the Unemployment Assistance Board. [200]

Relation to Unemployment Assistance.—Outdoor relief may not be given to any person who is entitled to unemployment assistance or whose means have been taken into account in determining the amount of unemployment assistance to be granted to any other person, or to any person in receipt of unemployment benefit unless he is a person who has been decided not to be eligible for unemployment assistance, but where a person has been granted an allowance subject to certain conditions and by reason of his contravention of the conditions the allowance was not issued, this provision only prohibits the granting of outdoor relief to that person himself. The provision does not apply to the granting of relief in respect of the medical needs of any person or affect any powers or duties of granting relief in the case of sudden or urgent necessity (s). The Unemployment Assistance Board must, subject to the proviso that the amount so reimbursed does not exceed the Board's scale of allowance, pay to any public assistance authority the cost of any outdoor relief, not granted in respect of medical needs, given to any person to whom the Act applies pending a decision that

(o) Local Government Board Circular, December 20, 1911.

(p) Poor Law Act, 1930, s. 47; 12 Halsbury's Statutes 991.

(q) Unemployment Insurance Act, 1935, s. 54 (1); 28 Halsbury's Statutes 529.

(r) *Ibid.*, s. 54 (2).

(s) Poor Law Act, 1930, s. 17; 12 Halsbury's Statutes 978; Unemployment Insurance Act, 1935; 28 Halsbury's Statutes 499.

he was eligible for the receipt of unemployment assistance. See also title UNEMPLOYMENT. [201]

Relation to Workmen's Compensation.—Where outdoor relief has been given to a person pending the settlement of his claim to compensation under the Workmen's Compensation Act, and either such relief would not have been granted had the person been in receipt of compensation, or the relief was in excess of the amount which would have been granted had the person so received compensation, the amount so granted may be claimed from the employer after the compensation has been settled up to an amount not exceeding the total amount of compensation (t). [202]

Relation to Old Age and Widows' Pensions.—Where outdoor relief has been granted to or on account of any person, who though entitled to an old age or widow's pension is not at the time receiving payment, and either that relief would not have been granted if the person had then been receiving payment on account of a pension, or the relief was in excess of the amount which would have been granted if he had been receiving such pension, repayment may be made to the council of such amount after the claim has been settled. In the case of a non-contributory old age pension the amount of relief granted to a person must be included in the amount of the recipient's means. Where outdoor relief is given to an old age pensioner the relieving officer should notify the local pension officer (u). A relieving officer is bound to furnish the pension officer with information of a pensioner who has been in receipt of relief (a). [203]

London.—See title PUBLIC ASSISTANCE IN LONDON. [204]

(t) Workmen's Compensation Act, 1923, s. 41; 11 Halsbury's Statutes 579.

(u) Circular of Local Government Board; July 17, 1914; M. of H.; March 18, 1921.

(a) Old Age Pensions Regulations, 1920.

OUTGROWTHS

See TOWN PLANNING.

OWNERS, AGREEMENTS WITH

See TOWN PLANNING AGREEMENTS WITH OWNERS; RATING OF OWNERS.

OWNERS, RATING OF

See RATING OF OWNERS.

OVERCROWDING

	PAGE		PAGE
GENERAL LEGISLATION -	88	DUTY OF LANDLORD TO INFORM LOCAL AUTHORITY -	96
DUTY OF LOCAL AUTHORITY -	88	RIGHT OF LANDLORD TO OBTAIN POSSESSION OF AN OVER-CROWDED HOUSE -	97
THE SURVEY - - -	89	ENFORCEMENT OF OVERCROWDING PROVISIONS OF THE HOUSING ACT, 1936 -	97
METHOD OF SURVEY - -	89	POWER OF ENTRY FOR MEASUREMENT - - -	98
THE CONDUCT OF THE SURVEY -	90	DUTY OF MEDICAL OFFICERS TO FURNISH PARTICULARS OF OVER-CROWDING -	98
RESULTS OF THE SURVEY -	90	ADMINISTRATION OF PART IV. OF THE HOUSING ACT, 1936 -	98
OVERCROWDING STANDARD -	90	CONTROL BY BYE-LAWS -	99
OFFENCES - - -	92	OVERCROWDING AS A STATUTORY NUISANCE - - -	100
POWER OF MINISTER TO INCREASE THE PERMITTED NUMBER -	94		
POWER OF LOCAL AUTHORITY TO INCREASE THE PERMITTED NUMBER - - -	94		
INFORMATION WITH RESPECT TO THE PERMITTED NUMBER -	95		
INFORMATION AS TO RIGHTS AND DUTIES - - -	96		

General Legislation.—Nearly all the legislation dealing with overcrowding is now contained in Part IV. of the Housing Act, 1936 (*a*). These provisions were, however, first enacted in the Housing Act, 1935, and the Act of 1936 therefore contains a section which validates anything done under the former Act, the expression "under this Act" being construed to include a reference to the former Act (*b*). The rest of the legislation is contained in the P.H.A., 1936. It was the general intention that overcrowding should be dealt with as far as possible under the Housing Act and not the P.H.A., and the scope of public health legislation has been substantially reduced in this respect by the codifying Act of 1936 (*c*). [205]

Duty of Local Authority.—The operation of the legislation of 1935 for preventing overcrowding depended first on the carrying out of a survey by housing authorities of the extent of overcrowding in their areas. It was made the duty of these authorities to cause an inspection of their districts to be made to ascertain what dwelling-houses therein were overcrowded, and to prepare and submit to the Minister of Health a report showing the result of the inspection, and the number of new houses required in order to abate the overcrowding. Unless they were satisfied that the required number of new houses would be provided otherwise, they were also ordered to prepare proposals for providing them, which had to be submitted to the Minister (*d*).

(*a*) 29 Halsbury's Statutes 609—618.

(*b*) S. 189 (1), (2); *ibid.*, 688. The local authority entrusted with the execution of these powers is the housing authority: *i.e.* outside London, the council of the borough, urban or rural district, s. 1 (1); *ibid.*, 565.

(*c*) See e.g. Second Interim Report of the Local Government and Public Health Consolidation Committee, 1936, Cmnd. 5059, p. 96.

(*d*) This survey was carried out in accordance with the provisions of the Housing Act, 1935, s. 1; 28 Halsbury's Statutes 204. This section has been repealed and

These provisions are now spent, as the survey required by them has been carried out. Local authorities are, however, still required to cause a further inspection to be made, and to prepare and submit a report to the Minister, together with similar proposals, if it appears to them that occasion for such a course of action has arisen in their district, or a part of it. They are obliged to do so if the Minister so directs, and in this event he may fix dates before which the performance of these duties is to be completed, after consulting the local authority (e). [206]

The Survey.—The form of the inspection was not laid down by the Act of 1935, but it was said that it "must be such an inspection as will bring to light all cases of overcrowding" (f). A complete survey would have involved a comprehensive and detailed examination of all working-class accommodation in the district, including the measurement of all the habitable rooms in every house. Not only would this have disclosed all over crowding, but it would have provided a large amount of information including that required for the purpose of informing a landlord or occupier, on request, of the "permitted number" in respect of any particular dwelling-house (g). Such a proceeding would, however, have been lengthy and costly, and, though measurement must be carried out sooner or later, the M. of H. was of opinion that it would have been more elaborate than a mere compliance with the duty imposed by sect. 1 of the Act of 1935. Local authorities were accordingly informed that the Minister, in considering the question of the dates to be fixed under that section, had in mind a more limited survey, designed primarily to serve the specific objects of the section, namely, to ascertain the amount of overcrowding and the amount of new accommodation required to abate it. [207]

Method of Survey (h).—The method recommended to local authorities contemplated a survey of two stages. The first was a preliminary house-to-house survey of all working-class houses in the area, directed to ascertain as respects each house (i.) whether it was empty, and (ii.) the number of rooms occupied by each family. The application of Table I. (i) indicated at once that a certain number of families were overcrowded irrespective of the size of the rooms, and the facts disclosed also indicated a likelihood that a certain number of other families would be found to be overcrowded on the application of Table II. The second part of the survey therefore consisted in a more detailed

re-enacted as s. 57 of the Housing Act, 1936; 29 Halsbury's Statutes 609. The Minister fixed the following days for the completion of successive stages of the work: (1) for the completion of inspection, April 1, 1936; (2) for the submission of the report, June 1, 1936; (3) for the submission of proposals, August 1, 1936. See M. of H. Circular 1507.

(e) Housing Act, 1936, s. 57 (2); 29 Halsbury's Statutes 609. The M. of H. has expressed the view that, once a complete survey has been carried out and the overcrowding abated, there should be no need for any subsequent survey on the same scale. This provision was inserted in the Act of 1935 to meet exceptional conditions. See Housing Act, 1935, Memorandum B, "The Prevention and Abatement of Overcrowding," 1935, p. 3. It still remains the duty of local authorities periodically to review the housing conditions in their areas and to frame proposals for the provision of new houses; Act of 1936, s. 71.

(f) Memorandum B, p. 14.

(g) See *post*, p. 91.

(h) See Housing Act, 1935, "Report on The Overcrowding Survey in England and Wales," 1936, pp. v. et seq.

(i) See *post*, p. 91.

inspection involving the measurement of the floor area of all the rooms in the houses in which a possible case of overcrowding had been disclosed by the preliminary survey. [208]

The Conduct of the Survey (k).—In most areas the survey was carried out under the general directions of the M.O.H. assisted by the sanitary inspectors. Some local authorities omitted the preliminary enumeration and proceeded direct to systematic measurement of all working-class houses, holding the view that this would be the easier course in the long run. In deciding which houses were "used as a separate dwelling by members of the working classes," or were "of a type suitable for such use" (l), many local authorities chose a rateable value criterion, excluding all houses with a rateable value over £26, or some other figure they considered appropriate. Others had no criterion, but excluded houses in particular areas occupied by persons not of the working class. Some authorities included every house in their area. Most authorities measured a substantial number of houses, the greater part of which were found to be not overcrowded. The total number measured has been estimated at about half a million. [209]

Results of the Survey (m).—Caution must be exercised when using the results of the survey for comparative purposes. The reasons for this are set out in the Overcrowding Report, 1936, at pages viii, ix.

Generally speaking the survey disclosed that out of the 8,924,528 dwellings that were inspected, 341,554 were overcrowded, and that, at the time of the survey, 3.8 per cent. of families in England and Wales were living in overcrowded conditions. 5.1 per cent. of houses owned by local authorities, and 3.7 per cent. of houses owned by private persons were found to be overcrowded. The number of new houses required was found to be substantially less than 340,000. [210]

Overcrowding Standard.—A dwelling-house (n) is to be deemed to be overcrowded for the purposes of the Act of 1936 at any time when the number of persons sleeping in the house either (i.) is such that any two persons of opposite sexes, ten years of age or more, and not living together as husband and wife, must sleep in the same room (o) ; or (ii.) is in excess of the number of persons permitted by the following rules dealing with the number and floor area of the rooms (p) :

(i.) the number specified in the second column of Table I. below, or

(k) "Overcrowding Report," 1936, pp. vi. *et seq.* Model Forms were printed in Memorandum B, which also contained suggestions as to the method of conducting the survey which the Minister, after consulting the associations of local authorities, recommended all authorities to adopt. The forms and the recommended method were not formally prescribed, but in fact the recommended forms were used in practically every instance.

(l) Housing Act, 1935, s. 12. See now Act of 1936, s. 68 ; 20 Halsbury's Statutes 915.

(m) See "Overcrowding Report," 1936, pp. ix. *et seq.*, which contains elaborate tables showing the extent of overcrowding in each district.

(n) "Dwelling-house" is defined for the purposes of the overcrowding provisions of the Act of 1936, to mean any premises used as a separate dwelling-house by members of the working classes or of a type suitable for such use ; s. 68 ; 20 Halsbury's Statutes 616. In the case of a house, part of which is sub-let, the rooms occupied by the sub-tenant therefore constitute a separate house. See Memorandum B, p. 5.

(o) "Room" is so defined as to exclude any room of a type not normally used in the locality either as a living room or a bedroom ; *ibid.*, s. 68.

(p) Housing Act, 1936, s. 58 (1) ; 20 Halsbury's Statutes 610.

(ii.) the aggregate for all the rooms in the house, obtained by reckoning the number specified for each room in the second column of Table II. below, in relation to the floor area specified in the first column. [211]

TABLE I.

Where a house consists of :

(i.) One room	-	-	-	-	2
(ii.) Two rooms	-	-	-	-	3
(iii.) Three rooms	-	-	-	-	5
(iv.) Four rooms	-	-	-	-	7½
(v.) Five rooms or more	-	-	-	-	10, with an additional 2 in respect of each room in excess of five.

TABLE II.

Where the floor area of a room is :

(i.) 110 sq. ft. or more	-	-	-	-	2
(ii.) 90 sq. ft. or more, but less than 110 sq. ft.	-	-	-	-	1½
(iii.) 70 sq. ft. or more, but less than 90 sq. ft.	-	-	-	-	1
(iv.) 50 sq. ft. or more, but less than 70 sq. ft.	-	-	-	-	½
(v.) Under 50 sq. ft.	-	-	-	-	Nil.

The "permitted number" is the lesser of the two figures arrived at by applying Tables I. and II.

In computing the number of rooms in a house for the purposes of Table I., no regard is to be had to any room having a floor area of less than 50 sq. ft. (q). [212]

The floor area is to be ascertained for the purposes of these rules in the following manner :

(i.) The area of any part of the floor space over which the vertical height of the room is reduced to less than 5 feet by reason of a sloping roof or ceiling is to be excluded from the computation of the floor area of that room.

(ii.) Subject to this, the floor area is to be measured so as to include in the computation any floor space formed by a bay window extension, and any area at floor level which is covered or occupied by fixed cupboards or projecting chimney breasts.

(iii.) All measurements for the purpose of computing the floor area are to be made at the floor level, and (subject to the foregoing), are to extend to the back of all projecting skirtlings (r).

In determining the number of persons sleeping in a house, no account is to be taken of a child under one year old. A child who has attained one year and is under ten years old is to be reckoned as one-half of a unit (s). [213]

(q) Housing Act, 1936, s. 58 (1), Sched. V.; 29 Halsbury's Statutes 610, 690. The Minister is empowered by s. 62 (3) to prescribe the manner in which the floor area of a room is to be ascertained for the purposes of the Fifth Schedule, and the regulations may provide for the exclusion from computation, or for bringing into computation at a reduced figure, of a floor space in any part of a room which is of less than a specified height, not exceeding eight feet.

(r) Housing Act (Overcrowding and Miscellaneous Forms) Regulations, 1937, Art. 4; S.R. & O., 1937, No. 80.

(s) Act of 1936, s. 58 (2). A number of examples of the operation of the rules for the calculation of the "permitted number" will be found in Memorandum B, at pp. 5-7.

Offences.—If after the appointed day (*t*) the occupier or the landlord (*u*) of a dwelling-house causes or permits it to be overcrowded, he is guilty of an offence under the Act of 1936 and is liable on summary conviction to a fine not exceeding £5, and to a further fine not exceeding £2 in respect of every day subsequent to the day on which he is convicted on which the offence continues (*a*).

As the overcrowding standard has reference only to the number of persons *sleeping* in a house (*b*), overcrowding in the daytime is not a contravention of these provisions. There may, indeed, be a question how insanitary conditions of this kind can be dealt with at the present time, since overcrowding is, generally speaking, no longer a "statutory nuisance" under Public Health legislation (*c*). Also, the standard only applies to *dwelling-houses*, and this rules out night shelters, hostels, and the like (*d*). [214]

The occupier of a dwelling-house on the appointed day is not guilty of any overcrowding offence so long as all the persons sleeping in the house are persons who were living there on the appointed day, and thereafter continuously live there, or are children born after that day to any of those persons, *unless* (*i.*) suitable alternative accommodation (*e*) is offered to the occupier after the appointed day, and he fails

(*t*) "Appointed day" is defined by s. 68 of the Act of 1936 to mean, in relation to any matter in respect of which the M. of H. has appointed a day under the Act of 1935, that day, and, in relation to any other matter, such day as he may appoint. The Minister may fix different days for different purposes, different provisions, and different localities. The fixing of an appointed day is necessary to fix dates for a number of purposes: (1) after which overcrowding may constitute an offence and the general provisions of the Act come into operation, (2) six months after which notices must be inserted in rent books (see *post*, pp. 95–96); (3) from which bye-laws under the Act of 1925 relating to the number of persons permitted to live in a house cease to have effect. In this case the appointed day will be identical with that prescribed for purpose (1), *supra*. See *post*, pp. 99–100, M. of H. Circular 1539.

The Minister decided to fix January 1, 1937, as the "pivotal" appointed day for all areas where the survey disclosed that the total number of overcrowded families was under 100, or was less than 2 per cent. of the total number of working-class houses in the district. In fixing January 1, 1937, as the earliest date for which overcrowding should constitute an offence, the Minister had, in mind two points: (*i.*) that the intervening period would allow local authorities to put in hand, if not to complete, at any rate a portion of the accommodation necessary for the abatement of overcrowding, and thus to shorten the period between the appointed day and the actual abatement of existing overcrowding, and (*ii.*) that the appointed day from which overcrowding is to constitute an offence must not be fixed until adequate steps have been taken to inform the public in the district as to the circumstances in which the offence will arise. See Circular 1539. Appointed days have been prescribed for the greater part of England and Wales.

(*u*) "Landlord" is defined by s. 68 of the Act of 1936 to mean the immediate landlord of an occupier, and includes, in relation to an occupier of a dwelling-house who holds under a contract of employment under which the provision of the house for his occupation forms part of his remuneration, his employer.

(*a*) Housing Act, 1936, s. 59 (1); 29 Halsbury's Statutes 610.

(*b*) See *ante*, p. 90.

(*c*) Cases of this kind have come before the courts in the past. See *Wimbledon U.D.C. v. Hastings* (1902), 67 J. P. 45; 36 Digest 179, 246, in which it was held that the overcrowding of a day school was a statutory nuisance within the meaning of s. 91 of the P.H.A., 1875.

(*d*) "Night shelters" provided by charitable bodies for destitute persons have been the subject of litigation. See *R. v. Mead, Ex parte Gates* (1895), 64 L. J. (M. C.) 109; 36 Digest 179, 243; *R. v. Slade* (1896), 65 L. J. (M. C.) 108; 36 Digest 179, 244. These cases were founded on "statutory nuisance" provisions contained in the P.H. (London) Act, 1891, s. 2; 11 Halsbury's Statutes 1025. See also titles *NUISANCES*; *NUISANCES SUMMARILY ABATABLE UNDER PUBLIC HEALTH ACTS*.

(*e*) "Suitable alternative accommodation" is defined by s. 68 to mean, in relation to the occupier of a dwelling-house, a dwelling-house as to which the following

to accept it ; or (ii.) suitable alternative accommodation is so offered to some person living in the house who is not a member of the occupier's family, and whose removal is reasonably practicable in all the circumstances, and the occupier fails to require his removal (f). [215]

Where after the appointed day a dwelling-house which would not otherwise be overcrowded becomes overcrowded by reason of a child reaching the age of either one or ten years, if the occupier applies to the local authority for suitable alternative accommodation, or has so applied before the child reaches the age in question, he is not guilty of an overcrowding offence in respect of the overcrowding of the house after the date of his application, so long as all the persons sleeping in the house are persons who were living there on the date when the child reached the age in question and thereafter continuously live there, or are children born after that date of any of those persons, *unless* (i.) suitable alternative accommodation is offered to the occupier on or after the date when the child attains that age, or, if he has applied before that date, is offered at any time after the application, and he refuses ; or (ii.) the removal from the house of some person not a member of the occupier's family is on that date (or thereafter becomes) reasonably practicable, having regard to all the circumstances, including the availability of suitable alternative accommodation for that person, and the occupier fails to require his removal (g).

Where the persons sleeping in an overcrowded house include a member of the occupier's family who does not live there, but is sleeping there temporarily, the occupier is not guilty of an overcrowding offence unless the circumstances are such that he would be guilty if that member of his family were not sleeping in the house (h). [216]

The landlord is deemed to cause or permit a house to be overcrowded if (i.) after notice in writing that it is overcrowded in such circumstances as to render the occupier guilty of an offence has been served upon him or his agent (i) by the local authority, he fails to take such steps as are reasonably open to him for securing the abatement of the overcrowding, including the necessary legal proceedings for possession of the house (k) ; or (ii.) when letting the house after the appointed day he, or any person effecting the letting on his behalf,

conditions are satisfied : (i.) the house must be a house in which the occupier and his family can live without being overcrowded ; (ii.) the local authority must certify the house to be suitable to the needs of the occupier and his family and respects security of tenure and proximity to place of work, and otherwise to be suitable in relation to his means ; and (iii.) if the house belongs to the local authority, they must certify it to be suitable to the needs of the occupier and his family, having regard to the re-housing standard prescribed by s. 136. It will be observed that this definition follows very closely that contained in the Rent Restrictions Acts.

See the Housing Act (Overcrowding and Miscellaneous Forms) Regulations, 1937, S.R. & O., 1937, No. 80, Form G, "Certificate as to Suitable Alternative Accommodation," and Form H, "Certificate of Availability of Suitable Alternative Accommodation."

(f) Housing Act, 1936, s. 59 (2) ; 29 Halsbury's Statutes 610.

(g) *Ibid.*, s. 59 (3).

(h) *Ibid.*, s. 59 (4).

(i) "Agent" is defined to mean, in relation to the landlord of a dwelling-house, a person who collects rent in respect thereof on behalf of the landlord, or is authorised by him so to do, or, in the case of a dwelling-house occupied by a person who holds under a contract of employment under which the house forms part of his remuneration, a person who pays remuneration to the occupier on behalf of the employer, or is authorised by him so to do ; *ibid.*, s. 68.

(k) See Housing Acts (Overcrowding and Miscellaneous Forms) Regulations, 1937 (S.R. & O., 1937, No. 80), Form C, "Notice that a House is Overcrowded."

had reasonable cause to believe that it would become overcrowded in such circumstances as to render the proposed occupier guilty of an offence, or failed to make inquiries of the proposed occupier as to the number, age, and sex of the persons who would be allowed to sleep in the house *and not otherwise* (*i.*). [217]

Power of Minister to Increase the Permitted Number.—In certain cases the Minister has powers to relax the overcrowding provisions of the Act of 1936. These powers come into operation where, on the representation of the local authority, and after consultation with the Central Housing Advisory Committee (*m*) he is satisfied that dwelling-houses, consisting of few rooms, or comprising rooms of exceptional floor area, constitute so large a proportion of the housing accommodation in the district of the authority, or in any part of it, that the application of the overcrowding provisions of the Act of 1936 immediately after the appointed day would be impracticable. He may then direct by order that these provisions shall have effect in relation to the houses, or to such of them as are of a specified type, subject to such modifications for increasing the permitted number of persons as may be specified. The order may specify different modifications in relation to different types of houses. It may have effect for any period that may be specified, not exceeding three years from the date of operation; this period may be extended by the Minister (*n*). After consultation with the advisory committee and the local authority, the Minister may revoke any order of this kind, or vary its provisions either as respects the modifications specified therein, or as respects the houses to which the modifications apply, or both (*o*). [218]

Power of Local Authority to Increase the Permitted Number.—Where it appears to a local authority to be expedient, having regard to the existence of exceptional circumstances, they may, on the application of the occupier or intending occupier of a dwelling-house in their district, grant him a licence authorising him to permit such number of persons in excess of the permitted number to sleep in the house as may be specified in it (*p*). The licence must be in the prescribed form (*q*), and it may be granted either unconditionally or subject to any conditions specified in it (*r*). The period of operation of a licence is also to be specified, and cannot exceed twelve months. It may be made for a shorter period, and can be revoked by the local authority at their discretion by means of a notice in writing served upon the

(*i*) Housing Act, 1936, s. 59 (5). As to the right of a landlord to obtain possession of an overcrowded house, see *post*, p. 97.

(*m*) See title *HOUSING*.

(*n*) Housing Act, 1936, s. 60 (1); 20 Halsbury's Statutes 611.

(*o*) *Ibid.*, s. 60 (2). The M. of H. has expressed the view that it may be necessary to have recourse to this power in relation to exceptional areas where the normal housing accommodation available for the working classes is such that some considerable measure of overcrowding on the standard in the Act is unavoidable for a substantial period. It is not anticipated, however, that any substantial number of local authorities will find it necessary to make representations under this section. Normally it is expected that any relaxation provided of this kind would apply to particular types of houses and not to all houses in an area. See Memorandum B, pp. 8—9.

(*p*) Housing Act, 1936, s. 61 (1); 20 Halsbury's Statutes 612.

(*q*) See Form E, "Licence for Temporary Use of House by Persons in Excess of the Permitted Number." The Housing Act (Overcrowding and Miscellaneous Forms) Regulations, 1937.

(*r*) Housing Act, 1936, s. 61 (2).

occupier specifying a period (not less than one month from the date of the service of the notice), at the expiration of which the licence is to cease to have effect (s). A copy of any licence, and of any notice of revocation, is to be served by the local authority on the landlord (if any) of the dwelling-house to which it relates, within seven days after the issue of the licence or the service of the notice on the occupier (t). The occupier is not guilty of an offence in relation to overcrowding by reason of anything done by him under the authority of, and in accordance with, the condition specified in a licence still in force (u). A local authority may take into consideration a seasonal increase in population in their district as an exceptional circumstance to which regard is to be had for these purposes (a). [219]

Information with Respect to the Permitted Number.—After a period of six months has elapsed from the appointed day, every rent book or similar document used in relation to a dwelling-house by or on behalf of the landlord must contain a summary of the provisions of the Act of 1936 dealing with the definition of overcrowding, overcrowding offences, and the local authority's power to authorise temporary increases in the permitted number, and a statement of the permitted number of persons in relation to the house. If any such book or document not containing this information is used by or on behalf of the landlord he is liable on summary conviction to a fine not exceeding £10. An occupier of a dwelling-house who is required by an officer of the local authority duly authorised in that behalf to produce any rent book or similar document for inspection, which is being used in relation to the house, and is in his custody or under his control, must produce it to the officer or at the offices of the authority on being so

(s) Housing Act, 1936, s. 61 (3). Form F, "Notice Revoking Licence to Exceed the Permitted Number of Persons."

(t) *Ibid.*, s. 61 (4).

(u) *Ibid.*, s. 61 (5).

(a) *Ibid.*, s. 61 (6). These powers enable local authorities to control temporary overcrowding which may be unavoidable. This may arise in various ways. A not unusual case will, in the opinion of the M. of H., be that of a family who are obliged to move, but cannot find any accommodation in which they will not infringe the standard. Apart from individual cases of this kind, recourse to licensing may be necessitated by the temporary increase of the population of a small district caused, for instance, by an influx of workmen carrying out constructional works. The circumstances of holiday resorts are dealt with specifically, and these may require the issue of licences on rather a large scale. See Memorandum A, p. 9.

In all cases where a licence is issued (Memorandum A continues), it is important to ensure that it is so framed as to permit only the minimum amount of overcrowding for the shortest possible time. This will be comparatively easy in the case of an application from an occupier for a licence to cover the occupation of a house by himself or by certain specified persons for a limited period, but in the case of licences granted to meet the circumstances of holiday resorts it will be necessary for the local authority to exercise special care. In many cases the application received by the local authority will take the form of a request for a general permit to take in visitors during the normal holiday season, and it is desirable that in those circumstances any licence should cover any lettings during the season, so that an occupier would not have to make more than one application. On the other hand, the conditions of the licence should be determined by the circumstances of the case, and in considering the degree of relaxation to be permitted, the local authority should have primary regard to the occupier's own family and the accommodation available for them. It would in suitable circumstances be proper for the local authority to make it a condition of the licence that at all times a certain specified number of rooms should be retained for the exclusive use of the occupier and his family.

It will be necessary for the local authority to make arrangements for the keeping of records of all licences issued, and of their period of operation.

required, or within seven days thereafter. If he fails to do so he is liable on summary conviction to a fine not exceeding £2 (b).

It is the duty of the local authority, upon the application of the landlord or of the occupier of a dwelling-house, to inform the applicant in writing of the number of persons constituting the permitted number in relation to the house, and a statement inserted in a rent book or similar document in accordance with the above provisions is to be deemed to be a sufficient and correct statement if it agrees with the information given in this manner (c).

A certificate of the local authority stating the number and floor areas of the rooms in a dwelling-house, and that the floor areas have been ascertained in the prescribed manner, is *prima facie* evidence of the facts stated therein for the purposes of any legal proceedings (d). [220]

Information as to Rights and Duties.—A local authority is empowered to publish information for the assistance of landlords and occupiers of dwelling-houses as to their rights and duties under the overcrowding provisions of the Act of 1936, and as to their enforcement (e). [221]

Duty of Landlord to Inform Local Authority.—Where after the appointed day it comes to the knowledge of the landlord of a dwelling-house or of his agent that it is overcrowded, notice thereof must be given by the landlord or agent to the local authority within seven days after the fact comes to his knowledge, unless it has already been given. If he fails to do so he is liable on summary conviction to a fine not

(b) Housing Act, 1936, s. 62 (1). See the Housing Acts (Overcrowding and Miscellaneous Forms) Regulations, 1937 (S.R. & O., 1937, No. 80), Art. 4, Schedule, Part I., for a prescribed form of the summary of ss. 58, 59 and 61 of the Act of 1936, to be inserted in a rent book or similar document.

(c) *Ibid.*, s. 62 (2).

(d) *Ibid.*, s. 62 (4).

(e) *Ibid.*, s. 63. The M. of H. has called the attention of local authorities to the fact that a statutory standard of overcrowding is being applied for the first time, stressing the advantages of preventing rather than punishing offences. To this end it will be necessary to ensure that owners and occupiers are made aware of the dates fixed, and the obligations which follow therefrom. Much can be done to bring the Act into operation effectively and without friction, by the dissemination of information during the time which elapses before overcrowding becomes an offence. The Minister has expressed the hope that each local authority will give this question their serious consideration, and take such action as is appropriate to the circumstances of their district. The manner of making public the necessary information is a matter for each local authority to decide, but the Minister feels that whether or not pamphlets, circulars or press notices are used for this purpose, it is desirable that notices should be printed and exhibited in the usual places drawing attention to the fixing of the appointed days and stating that further information can be obtained from the offices of the local authority. See Circular 1539. It is essential that this information should be forthcoming when it is requested as there are sure to be the same points arising again and again. It will probably be the most convenient course for each authority to prepare, or to obtain, pamphlets covering the chief points of the overcrowding code and explaining fully points on which difficulty is likely to arise. The Minister has stressed the desirability of making clear to the tenant that the permitted number in the rent-book is the number for the whole dwelling comprised in the tenancy to which that rent-book relates, and that if he lets part of his house to a sub-tenant the permitted number is no longer applicable. In the ordinary course the sub-tenant will have a rent-book in which the permitted number for his dwelling must be inserted by the tenant (who is the sub-tenant's landlord), and the tenant himself will be left with a dwelling in respect of which there is no separate rent-book. It will, therefore, be necessary for the tenant to ascertain from the local authority or otherwise the permitted number for the dwelling consisting of the part of the whole house which he himself occupies. See Circular 1591.

exceeding £2. This provision does not apply to overcrowding which existed on the appointed day, or has been notified to the landlord or to his agent by the local authority, or is constituted by the use of the house for sleeping by such number of persons as the occupier is authorised to permit to sleep there by an overcrowding licence (f). [222]

Right of Landlord to Obtain Possession of an Overcrowded House.—Where a dwelling-house is overcrowded in such circumstances as to render the occupier guilty of an overcrowding offence, the Rent and Mortgage Interest Restriction Acts, 1920 to 1933, do not prevent the landlord from obtaining possession of the house (g). Where a landlord comes into possession of a house by virtue only of these provisions, these Acts do not cease to apply to the house by reason only of the fact that the landlord has come into possession of it, notwithstanding sect. 2 of the Rent and Mortgage Interest Restrictions Act, 1923 (h). [223]

Enforcement of Overcrowding Provisions of the Housing Act, 1936.—It is the duty of the local authority to enforce the overcrowding provisions of the Housing Act, 1936, as respects dwelling-houses in their district. A prosecution for an overcrowding offence must not be instituted otherwise than by the local authority, with the exception that a prosecution *against* the local authority may be instituted by another person with the consent of the Attorney-General (i).

The local authority may serve notice in writing upon the occupier of a dwelling-house which is overcrowded in such circumstances as to render him guilty of an offence, requiring him to abate the overcrowding before the expiration of fourteen days from the date of the service of the notice. If at any time within three months from the expiration of that period the house is in the occupation of the person upon whom the notice was served, or of a member of his family, and is overcrowded in such circumstances as to render the occupier guilty of an offence, the local authority may make complaint to a court of summary jurisdiction, and thereupon the court must order, by its warrant in the form set out in the Schedule to the Small Tenements Recovery Act, 1838, or in a form to the like effect, vacant possession to be given to the landlord within such period as they may determine, not being less than fourteen nor more than twenty-eight days. Any expenses incurred by the local authority in securing the giving of possession of a dwelling-house to the landlord may be recovered by them from him summarily as a civil debt (k). [224]

For the purpose of enabling them to discharge their duties in connection with overcrowding, the local authority may serve notice on the occupier of a dwelling-house requiring him to furnish them within fourteen days with a statement in writing of the number, ages and sexes of the persons sleeping in the house, and, if the occupier makes default in complying with the requirement or furnishes a statement

(f) Housing Act, 1936, s. 64 ; 20 Halsbury's Statutes 614.

(g) *Ibid.*, s. 65 (1).

(h) *Ibid.*, s. 65 (2). See 10 Halsbury's Statutes 365.

(i) *Ibid.*, s. 66 (1).

(k) *Ibid.*, s. 66 (2). See Housing Acts (Overcrowding and Miscellaneous Forms) Regulations, 1937 (S.R. & O., 1937, No. 80), Form D, "Notice to Occupier to Abate Overcrowding."

which is to his knowledge false in any material particular, he is liable on summary conviction to a fine not exceeding £2 (*l.*) [225]

Power of Entry for Measurement.—Any person authorised by the local authority or the Minister in writing, stating the particular purpose for which the entry is authorised, may at all reasonable times enter any house, on giving twenty-four hours' notice of his intention to the occupier and to the owner, if the owner is known, for the purpose of measuring the rooms in order to ascertain the number of persons permitted to use the house for sleeping for the purposes of the overcrowding provisions of the Housing Act, 1936 (*m.*) [226]

Duty of Medical Officers to Furnish Particulars of Overcrowding.—Regulations prescribing the duties to be performed by Medical Officers of Health of boroughs and urban and rural districts, and by Medical Officers of Health in London, made by the Minister under sect. 108 of the L.G.A., 1933 (*n.*), and sect. 11 (2) of the P.H. (London) Act, 1936 (*o.*), must include provisions for imposing on these officers a duty to furnish annually to the Minister particulars with respect to overcrowding conditions, particularly as regards cases in which dwelling-houses in respect of which the local authority have taken steps for the abatement of overcrowding have again become overcrowded (*p.*) [227]

Administration of Part IV. of the Housing Act, 1936.—The M. of H. has stressed the importance of providing for the following essentials to ensure the smooth working of the new overcrowding legislation (*q.*): (i.) the measuring of the rooms in working-class houses for the purpose of ascertaining the permitted number for each working-class dwelling, and for the furnishing of this information to landlords for insertion in the prescribed form of notice in rent-books; (ii.) the combination of the information obtained by this measurement survey with the information obtained from the original overcrowding survey to build up a system of records which will not only serve as the basis for the authority's action in abating overcrowding but will show the progress made. Such a system of records is necessary to prevent a further

(*l.*) Housing Act, 1936, s. 66 (3). See Housing Acts (Overcrowding and Miscellaneous Forms) Regulations, 1937, Form B, "Notice Requiring Statement of Persons Sleeping in a House."

(*m.*) *Ibid.*, s. 157. See the Housing Acts (Overcrowding and Miscellaneous Forms) Regulations, 1937, Form A, "Notice before Entry for the Purpose of Measurement of the Rooms of House."

(*n.*) 26 Halsbury's Statutes 363.

(*o.*) 26 Geo. 5 & 1 Edw. 8, c. 50.

(*p.*) Housing Act, 1936, s. 67. The following duties have been prescribed by Regulation: A M.O.H. is required to furnish to the Minister as soon as possible after December 31 in each year a report for his district (or in the case of a union of districts for each constituent district) for the year ending on that date relating to overcrowding, and showing (i.) the number of dwellings overcrowded at the end of the year, together with the number of families and the number of persons dwelling in them, (ii.) the number of new cases of overcrowding reported, (iii.) the number of cases of overcrowding relieved and the number of persons concerned, (iv.) particulars of any cases in respect of which the local authority have taken steps for the abatement of overcrowding, and which have again become overcrowded, (v.) any other particulars with respect to overcrowding conditions upon which he may consider it desirable to report or which the Minister may from time to time require. See the Sanitary Officers (Outside London) Regulations, 1935, Art. 17 (4), S.R. & O., 1935, No. 1110, the Sanitary Officers (London) Regulations, 1935, S.R. & O., 1935, No. 11, Art. 2.

(*q.*) See Circular 1501.

survey at a subsequent date from becoming necessary. This system should be made a complete record of all existing overcrowded families, and of the action taken to deal with them, of new cases as they arise by reason of births or the growing up of children, and of cases licensed by the local authority; (iii.) the dissemination of information to the public concerning their new duties and responsibilities and the date from which these operated, and the preparation of pamphlets for distribution to inquirers.

Overcrowding is, generally speaking, to be abated by finding the occupier of an overcrowded house another of suitable size, suitably situated and suitably rented, in which he and his family can lead a healthy and comfortable life. This does not mean that it will be necessary for the local authority to build a new house for each overcrowded family, since the needs of at least the smaller overcrowded families will be largely met by a process of redistribution. For instance, reletting can be so arranged by an authority that on each occasion at least one case of overcrowding will be abated, and the same process is applicable to new building (r). [228]

Certain types of specially difficult cases are encountered. One of these is the owner-occupier. The Housing Act, 1936, makes no distinction between an occupier and an owner-occupier; neither must overcrowd the house in which he lives. Cases of this kind must be treated with special care and sympathy. Where overcrowding in an owner-occupied house can be relieved by the removal of lodgers or sub-tenants the matter is comparatively simple. Where, however, it is a case of the house being too small for the owner-occupier and his family, and the overcrowding is not likely to be relieved in a comparatively short time, e.g. by the marriage of a son or daughter, there may be no other solution but for the owner-occupier to move into a larger house. Such cases are comparatively few, but each calls for special consideration. It is obvious that no hard and fast rules can be laid down, but there are various expedients which may sometimes ease a particular situation. It may, for example, occasionally be feasible for the local authority to purchase the owner-occupier's house and, by means of advances under the Housing Act or Small Dwellings Acquisition Acts, assist him to become the owner of a larger house (s).

Another difficult type of case which calls for special consideration is the overcrowded house tied to a particular employment. These mostly occur as tied cottages in agricultural areas. In such cases one possible remedy which should always be explored is the extension of the cottages to provide additional accommodation with financial assistance under the Housing (Rural Workers) Acts (t). [229]

Control by Bye-Laws.—Where an appointed day has not been prescribed bringing Part IV. of the Housing Act, 1936, into operation, the local authority may, and if required by the Minister must, make and enforce bye-laws with respect to houses which are occupied, or are suitable for occupation by, the working classes, and for fixing, and from time to time varying the number of persons who may occupy such a house (u). Bye-laws dealing with overcrowding have, however, been omitted from Series XIII. and XIIIb. of the model bye-laws of

(r) See Circular 1591, pp. 2, 3.

(s) *Ibid.*, p. 4.

(t) *Ibid.*

(u) Housing Act, 1936, s. 6 (1) (a), (2); 29 Halsbury's Statutes 568.

the M. of H., since they would only be enforceable in a small and diminishing number of places (*a*), appointed days having now been fixed for the greater part of the country (*b*). Where such bye-laws are in force, the Rent and Mortgage Interest Restriction Acts, 1920 to 1933, do not prevent possession being obtained of any house, if it is required to secure compliance with them (*c*). Existing bye-laws made under earlier enactments (particularly the Housing Acts of 1925 and 1930) remain in force so far as they could have been made under the corresponding provision of the Housing Act, 1936, and therefore lose their validity as soon as Part IV. of the Act is applied to the area in question (*d*). [230]

Overcrowding as a Statutory Nuisance.—Until the passing of the P.H.A., 1936, overcrowding was dealt with in part under the bye-laws last mentioned; in part as a "statutory nuisance" under sect. 91 (5) of the P.H.A., 1875 (*e*). This provision has been repealed, on the ground that the powers of the Housing Act are sufficient, and the only general enactment relating to the law of nuisance which might be applied to overcrowding is that which makes the keeping of any premises in such a state as to be prejudicial to health (*f*) or a nuisance referred to in the Act as a statutory nuisance (*g*); this provision is continued from the P.H.A., 1875 (*h*). [231]

The overcrowding of any work-place (*i*) while work is being carried on so as to be prejudicial to the health of those employed therein is a statutory nuisance under sect. 92 (1) (e) of the P.H.A., 1936 (*k*).

The overcrowding of a tent, van, shed or similar structure used for human habitation, so as to prejudice the health of the inmates, is made a statutory nuisance by sect. 268 (2) (a) of the P.H.A., 1936. In this case the powers of the court before which proceedings are brought include the prohibition of the use for human habitation of the tent, van, shed or other structure at such places, or within such area as may be specified (*l*). [232]

(*a*) See Model Bye-Laws, Series XIII., p. 7.

(*b*) See M. of H. Circular 1591, January 1, 1937.

(*c*) Housing Act, 1936, s. 156 (1) (b); 29 Halsbury's Statutes 667.

(*d*) *Ibid.*, s. 189 (1), (3), (4).

(*e*) 13 Halsbury's Statutes 661.

(*f*) "Prejudicial to health" is defined to mean injurious, or likely to cause injury to health; P.H.A., 1936, s. 343; 29 Halsbury's Statutes 536.

(*g*) P.H.A., 1936, s. 92 (1) (a); *ibid.*, 304. It is somewhat hard to argue that this provision covers overcrowding, since this would make the part of sub-section (e) dealing with the overcrowding of workplaces superfluous.

(*h*) S. 91 (1); 13 Halsbury's Statutes 661.

(*i*) "Workplace" is defined so as to exclude a factory or workshop within the meaning of the Factories Act, 1937, but with this exception includes any place in which persons are employed otherwise than in domestic service. P.H.A., 1936, s. 343; 29 Halsbury's Statutes 536, as amended by Factories Act, 1937.

(*l*) 29 Halsbury's Statutes 395, as amended by Factories Act, 1937. For proceedings to abate statutory nuisances, see title *NUISANCES SUMMARILY ABATABLE UNDER PUBLIC HEALTH ACTS*.

(*m*) In this connection the expression "occupier" includes any person for the time being in charge of a tent, van, shed or similar structure. P.H.A., 1936, s. 268 (2), (5); 29 Halsbury's Statutes 493.

OVERDRAFTS

See BANKERS' AND OTHER OVERDRAFTS.

OVERHEAD WIRES

	PAGE		PAGE
TELEGRAPH AND TELEPHONE WIRES	101	GENERALLY	— 103
ELECTRIC LINES	— 102	LONDON	— 103
TRAMWAYS AND TROLLEY-BUS ROUTES	— — — 103		

See also titles :

ELECTRICITY SUPPLY ;
HIGHWAY NUISANCES ;

POSTAL TELEGRAPH AND TELEPHONE SERVICES ;
POSTMASTER-GENERAL.

Telegraph and Telephone Wires.—Telephones are “telegraphs” within the meaning of the Telegraph Acts (*a*). By sect. 12 of the Telegraph Act, 1868 (*b*), the company (*c*) may not place telegraphs, which expression (*d*) means, *inter alia*, wires, over or across a street or public road without the consent of the body having control of the street or road. “Street” and “public road” are both defined in sect. 8. An U.D.C. not liable to repair a road, *e.g.* when the road has not been taken over, are not the body having control of it under sect. 12 (*e*).

By sect. 8 of the Telegraph Act, 1878 (*f*), if any body or person having power to give consent under the Act of 1868 fails to give it within twenty-one days, or attaches to a consent any conditions, etc., to which the Postmaster-General objects, a difference is deemed to have arisen which is to be determined (*g*) by the police or stipendiary magistrate, or if there be no such magistrate, by the county court judge, from whose decision an appeal lies to the Railway and Canal Commissioners.

Highway authorities are entitled to impose only such conditions as concern them as highway authorities (*h*) and may not impose a condition that wires are not to be used for a particular purpose

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- (*a*) *A.-G. v. Edison Telephone Co.* (1880), 6 Q. B. D. 244; 42 Digest 885, 1.
 - (*b*) 19 Halsbury's Statutes 224.
 - (*c*) *I.e.* any company authorised by special Act to construct and maintain telegraphs. The term includes the Telegraph Act, 1868, s. 2; 19 Halsbury's Statutes 240.
 - (*d*) Telegraph Act, 1868, s. 8.
 - (*e*) *Postmaster-General v. Hendon U.D.C.*, [1914] 1 K. B. 564, C. A.; 42 Digest 888, 19.
 - (*f*) 19 Halsbury's Statutes 262.
 - (*g*) *Ibid.*, s. 4.
 - (*h*) *Postmaster-General v. London Corp.* (1898), 78 L. T. 120; 42 Digest 892, 35.

authorised by law. In one instance a corporation gave consent with the following condition attached to it: "that such consent is not to be made applicable to the purposes of any private company or individual, whose application if made direct to the corporation could be refused by the corporation without right of appeal." The wires were to be used by the National Telephone Company after they had been laid by the Postmaster-General. The court held that the corporation were not entitled to make this condition (i).

It seems clear from sect. 3 of the Telegraph Act, 1878 (k), that a condition providing for a pecuniary payment may be attached to a consent, but if no expense is incurred by the highway authority it is doubtful whether such a condition can be sustained on appeal (l).

[233]

Licensees of the Postmaster-General are subject to special provisions (m).

Where the wires are above the ordinary limits of user of the streets it appears that a company registered under the Companies Act and not incorporated under any special Act cannot be restrained by injunction from retaining wires (n), but the position might be different if the highway authority own the fee simple of the land on which the street is made (o). **[234]**

Electric Lines.—By sect. 14 of the Electric Lighting Act, 1882 (p), undertakers were prohibited from placing electric lines above ground, along, over or across any street without the express consent of the local authority, and by sect. 10 (b) of the Schedule to the Electric Lighting (Clauses) Act, 1899 (q), which was invariably applied, the consent of the Board of Trade (now the Minister of Transport) was also required.

By sect. 21 of the Electricity (Supply) Act, 1919 (r), where the consent of the Minister of Transport has been obtained to the placing of an electric line above ground, the consent of the local authority is not required, but the Minister must give the local authority and, if the line is to be placed along or across any county bridge or county road, the county council an opportunity of being heard. **[235]**

The consent of the Minister is usually given subject to the Overhead Line Regulations (s) made by the Electricity Commissioners for securing the safety of the public. These regulations make provision in detail for the strength, size and materials of the lines, their height and support, and for dealing with road crossings, breakages, etc.

Provision is made by sect. 22 of the Act of 1919 (t) for the placing of electric lines above ground otherwise than in streets. Such lines

(i) *Postmaster-General v. Glasgow Corpns.* (1900), 10 Ry. & Can. Tr. Cas. 238; 42 Digest 892, 36.

(k) 19 Halsbury's Statutes 262.

(l) See *Postmaster-General v. Glasgow Corpns.*, *supra*; *Postmaster-General v. Edinburgh Corpns.* (1897), 10 Ry. & Can. Tr. Cas. 247; 42 Digest 887, f.

(m) See Telegraph Act, 1892, s. 5; 19 Halsbury's Statutes 284.

(n) *Wandsworth Board of Works v. United Telephone Co.* (1884), 13 Q. B. D. 904; 42 Digest 887, 15.

(o) *Finchley Electric Light Co. v. Finchley U.D.C.*, [1903] 1 Ch. 437; 26 Digest 329, 603; but see *Postmaster-General v. Edinburgh Corpns.*, *supra*.

(p) 7 Halsbury's Statutes 603.

(q) *Ibid.*, 711.

(r) *Ibid.*, 768, as amended by the Act of 1926.

(s) E.L.C. 53 (Revised), dated May 22, 1931.

(t) 7 Halsbury's Statutes 768.

cannot be placed above buildings or land used as a garden or pleasure ground, but with this exception and subject to certain special provisions relating to railways and other statutory undertakings the Minister of Transport is empowered after giving all parties concerned an opportunity of being heard to give consent either unconditionally or upon such terms as he thinks just. Monetary consideration must be assessed by an official arbitrator and cannot be made a condition of consent (u). [286]

Where an overhead line has been erected by agreement with the landowner the line may be retained on the expiration of the agreement until the landowner or occupier objects, when the provisions of sect. 22 must be complied with or the line be removed.

By sect. 44 of the Electricity (Supply) Act, 1926 (a), proceedings under sects. 21 and 22 of the Act of 1919 may proceed simultaneously and if it is represented that a proposed line will prejudicially affect any ancient monument within the meaning of the Ancient Monuments Consolidation and Amendment Act, 1913 (b), the Minister of Transport must take into consideration any recommendations made to him by the Commissioners of Works with a view to preventing the ancient monument being prejudicially affected.

As to the position when a company has no statutory powers of supply, see *Wandsworth Board of Works v. United Telephone Co., Ltd., and Finchley Electric Light Co. v. Finchley U.D.C.*, ante, p. 102. [287]

Tramways and Trolley-Bus Routes.—Overhead wires may be placed in streets for conveying motive power to tramears and trolley-buses. Special parliamentary powers are needed except for tramways constructed under the Light Railways Act, 1896 (c). [288]

Generally.—By sect. 18 of the P.H.A., 1890 (d), urban authorities were empowered to make bye-laws for prevention of danger or obstruction from overhead wires across streets. This section is repealed by sect. 25 (4) of the P.H.A., 1925 (e), when adopted by the local authority, but bye-laws are to remain in force until revoked by a resolution of the local authority. By sect. 25 of the Act of 1925 wires may not be placed over, along or across any street without the written consent of the local authority, which may be given on such reasonable terms and conditions as they think fit. The section does not authorise monetary consideration as a condition of consent. By sect. 25 (3) these provisions do not apply to works or apparatus belonging to statutory undertakings. Sect. 26 of the same Act (f) provides that the local authority may make bye-laws for preventing danger from wires, on or over any premises and liable to fall on any street, in connection with wireless installations. These bye-laws require confirmation by the Minister of Health, who has issued a model series for the assistance of local authorities proceeding under the section. [289]

London.—The London Overground Wires, etc., Act, 1933 (g), which repealed the London Overhead Wires Act, 1891, provides for the control of wires in the administrative County of London by the appropriate local authority, i.e. the L.C.C., the City corporation or a metropolitan borough council. "Wires" includes cables, conductors, wires

- (u) *West Midlands J.E.A. v. Pitt and Others*, [1932] 2 K. B. 1; Digest (Supp.).
- (a) 7 Halsbury's Statutes 818. (b) S. 22; 12 Halsbury's Statutes 401.
- (c) 14 Halsbury's Statutes 252 *et seq.* (d) 13 Halsbury's Statutes 828.
- (e) *Ibid.*, 1124. (f) *Ibid.*, 1124.
- (g) 26 Halsbury's Statutes 604 *et seq.*

or similar apparatus and supports and attachments above ground and over any street or within fifty feet from any street.

Notice must be given to the appropriate local authority of the proposed erection of wires, and their consent obtained, to which the authority may attach conditions. The L.C.C. may make bye-laws to be enforced by the appropriate local authority.

Powers of entry and of removal are given, and exemptions are provided for the Crown, the Postmaster-General, the Port of London Authority and certain other authorities, authorised electricity undertakers, and wires in connection with tramway or trolley vehicle and railway undertakings, wires wholly on private land, and certain wires for illuminated signs.

Bye-laws in force under the Act of 1891 remain valid. [240]

OXFORD, CITY OF

The city of Oxford claims to be a corporation by prescription and has been granted by charter many rights and privileges, now mainly obsolete or relating to matters governed by the general law (*a*). The university has influenced the development of local government in Oxford. The city was constituted a county borough and special representation on its council was granted to the university in 1889 (*b*). The council of the city now consists (*c*) of fifty-one councillors, of whom

(*a*) Appendix to the Report of the Municipal Corps. Commissioners, Part I., pp. 95—107. As to the claim to serve in the office of butler at coronations, see Halsbury's Laws of England (Hailsham ed.), Vol. VI., title "Constitutional Law," p. 408, para. 455.

(*b*) Oxford Order, 1889 (confirmed by the Local Government Board's Provisional Order Confirmation Act, 1889 (52 Vict. c. xv.)), made under s. 52 of the L.G.A., 1888 & 10 Halsbury's Statutes 720. Prior to 1889, in addition to the University and the city council, the following authorities (on each of which special representation of the University was provided) also existed :

(i.) A Local Board, whose constitution was laid down in the P.H.A., 1875, ss. 6, 342 and Sched. I., Part I. (18); 18 Halsbury's Statutes 628, 764, 767. The Local Board was the successor of the Oxford Commissioners (among whom the University was represented) originally set up by Stat. 11 Geo. 3, c. 19 (1771). The peculiar position of the Oxford Commissioners was recognised in the P.H.A., 1848 (11 & 12 Vict. c. 63), s. 31 and the L.G.A., 1858 (21 & 22 Vict. c. 98), s. 82. The Local Board was first constituted by the L.G. Supplemental Act, 1865 (No. 5) (28 & 29 Vict. c. civili).

(ii.) A Markets Committee set up under Stat. 11 Geo. 3, c. 19 (1771). (iii.) A Police Committee set up by the Oxford Police Act, 1868 (31 & 32 Vict. c. lxx.), and continued by the Oxford Police Act, 1881 (44 Vict. c. xxxix.).

(iv.) A School Board (Elementary Education Act, 1870 (31 & 32 Vict. c. 75), s. 98).

(v.) A Board of Guardians of the Poor (Oxford Poor Act, 1854 (17 & 18 Vict. c. ccxxix.)).

In 1889 the Local Board, the Markets Committee and the Police Committee were abolished and their powers and property transferred, subject to modifications, to the corpn. (Oxford Order, 1889 (52 Vict. c. xv.)), Arts. 22, 24 and 28. The Guardians of the Poor were not abolished until the coming into operation of the L.G.A., 1929; 10 Halsbury's Statutes 883.

(*c*) Oxford Order, 1889 (52 Vict. c. xv.), Arts. 8, 9, 11 and 12, as amended by Order in Council consequent on the passing of the Oxford Extension Act, 1928

forty-two are elected by the local government electors and nine by the University (*d*), and seventeen aldermen, of whom fourteen are elected by the councillors representing the citizens and three by the University councillors (*e*). The hebdomadal council of the University appoints two members of the education committee (*f*), and the Vice-Chancellor nominates two members of the assessment committee on which the city council must also appoint two University councillors (*g*). [241]

The mayor of Oxford has not precedence over the Vice-Chancellor of the University (*h*), and the rights, privileges, duties or liabilities of the University as by law possessed under its charters or otherwise have expressly been saved in a number of Acts (*i*). [242]

Though the city is not a county of itself, the council annually, on November 9, elects a sheriff (*k*). [243]

The University directly exercised, or still exercises, a number of functions elsewhere entrusted to the normal local authorities. The assize of bread, wine and beer and the supervision of weights and measures in the city of Oxford and its suburbs was granted to the

(18 & 19 Geo. 5, c. lxxxiv.) (as to the number of members), and the Oxford Corps. Act, 1833 (23 & 24 Geo. 5, c. xxii.), s. 121 (as to the election of University councillors).

(*d*) Three councillors are elected by the University in Convocation, and six councillors by the heads and senior resident bursars of the several colleges entitled to matriculate students, and by the heads of the several public halls : Oxford Order, 1889 (52 Vict. c. xv.), Art. 11 (1) ; Oxford Corps. Act, 1833 (23 & 24 Geo. 5, c. xxii.), s. 121. Every member of the University (whether a Clerk in Holy Orders or not), being of the degree of Master of Arts, Bachelor of Civil Law, or Bachelor in Medicine, or of any superior degree of the University (and no other person) is qualified for election as a University councillor : Oxford Order, 1889 (52 Vict. c. xv.), Art. 11 (2). Women graduates are accordingly qualified.

(*e*) Oxford Order, 1889 (52 Vict. c. xv.), Art. 12 ; Municipal Corps. Amendment Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 19) (now L.G.A., 1933, s. 22 ; 26 Halsbury's Statutes 216). Separate meetings of the two bodies of councillors are held for the elections of their respective aldermen, which are reported to the council. A person is not qualified to be elected or to represent the University as an alderman unless he is a councillor representing the University or qualified to be such a councillor : Oxford Order, 1889 (52 Vict. c. xv.), Art. 12 (3).

(*f*) Under a scheme made under the Education Act, 1921, s. 4 and Sched. I., Part I. (1) ; 7 Halsbury's Statutes 132, 217. The University formerly elected one-third of the members of the Oxford School Board (Elementary Education Act, 1870 (33 & 34 Vict. c. 75), s. 93), which was abolished by the Education Act, 1902 (2 Edw. 7, c. 42), s. 5.

(*g*) Under an order made under the R. & V. Act, 1925, s. 64 (4) (14 Halsbury's Statutes 694) a relic of its former representation on the Assessment Committee of the Oxford Guardians of the Poor (Oxford Poor Act, 1854 (17 & 18 Vict. c. cxix.), as amended by the Local Government Board's Poor Law Provisional Orders Confirmation (Oxford, etc.) Act, 1875 (38 & 39 Vict. c. clxxviii.), and of the complicated system of rating University and college property formerly in existence (see Oxford Poor Act, 1854 (17 & 18 Vict. c. cxix.), as amended by the Local Government Board's Poor Law Provisional Orders Confirmation (Oxford, etc.) Act, 1875 (38 & 39 Vict. c. clxxviii.); Stat. 21 Geo. 3, c. 47 (1781), ss. 10—16 ; Stat. 52 Geo. 3, c. lxxii. (1812), ss. 5—8 ; Stat. 11 & 12 Vict. c. xxxvii. (1848); Oxford Police Acts, 1868 (31 & 32 Vict. c. lix.), ss. 11—16, and 1881 (44 Vict. c. xxxix.), ss. 10—15), which was preserved until 1889 by the P.H.A., 1875, s. 228 (18 Halsbury's Statutes 719), and the Municipal Corps. Act, 1882, s. 257 (5) (10 Halsbury's Statutes 658).

(*h*) Municipal Corps. Act, 1882, s. 257 (2) ; 10 Halsbury's Statutes 658 ; L.G.A., 1933, s. 302 ; 26 Halsbury's Statutes 464.

(*i*) E.g. L.G.A., 1933, s. 302 ; 26 Halsbury's Statutes 464 ; Highway Act, 1885, s. 114 ; 9 Halsbury's Statutes 111 ; Municipal Corps. Act, 1882, s. 257 (1) ; 10 Halsbury's Statutes 658.

(*k*) Municipal Corps. Act, 1882, s. 170 ; 10 Halsbury's Statutes 632. The sheriff, whose election was first provided for by the Municipal Corps. Act, 1835 (5 & 6 Will. 4, c. 70), s. 61, took the place of the two former bailiffs, and hence has not the execution in Oxford of the writs of the Superior Courts : *Granger v. Taunton* (1836), 3 Bing. N. C. 64 ; 21 Digest 441, 245.

University by charter (*l*). Under what remains of these powers the University still appoints two Clerks of the Markets (*m*). The Chancellor or Vice-Chancellor (or in their absence a Pro-Vice-Chancellor or Deputy Vice-Chancellor) is empowered to appoint and swear in constables whose authority extends within the precincts of the University and within four miles thereof. This power, however, may be exercised only in the appointment of the proctor's servants and of special constables (*n*). The Chancellor of the University formerly had the right to license three vintners to sell wine by retail (*o*). The power to grant these wine licences was subsequently transferred to the corporation (*p*), but has now been abolished (*q*). The registration in Oxford of clubs, mainly composed of members past or present, of the University, in which intoxicating liquor is supplied, is effected by furnishing the requisite statement to the Registrar of the Court of the Chancellor of the University (*r*). Jurisdiction to strike such clubs off the register is vested in the Court of the Chancellor of the University sitting and acting under the Oxford University (Justices) Act, 1886 (*s*). Licences for theatres within the precincts of the University or within fourteen miles of the city of Oxford require the consent of the Chancellor or Vice-Chancellor, and rules for the management of any such theatres require the approval of the Chancellor or Vice-Chancellor (*t*). Moreover,

(*l*) Charter of 29 Edw. 3 (June 27, 1355), printed in H. E. Salter, "Medieval Archives of the University of Oxford," Vol. I. (*Oxf. Hist. Soc.*, 1917), p. 152. The right to appoint inspectors of weights and measures was transferred to the Police Committee by the Oxford Police Act, 1868 (31 & 32 Vict. c. lix.), s. 9, and is now vested under the general law in the city council.

(*m*) The rights of the University in the markets, other than the right to appoint Clerks of the Markets, were transferred to the corp. by the Oxford Order, 1889 (52 Vict. c. xv.), Art. 24. One clerk is appointed by the Chancellor and the other by the Vice-Chancellor annually in congregation : "Statuta Universitatis Oxonensis" (1935), Tit. xvii., s. vi.

(*n*) Universities Act, 1825 (6 Geo. 4, c. 97); 6 Halsbury's Statutes 448, as amended by the Oxford Police Act, 1881 (44 Vict. c. xxxix.), s. 23, and the Oxford Order, 1889 (52 Vict. c. xv.), Art. 28.

(*o*) Charter of 11 Car. I (March 3, 1635-6), Art. 11, printed in A. & Wood, "History and Antiquities of the University of Oxford," published in English by John Gutch (1796), Vol. II., pp. 399-400.

(*p*) Oxford Corp. Act, 1890 (53 & 54 Vict. c. cxxiii.), s. 119.

(*q*) The right was preserved by the Licensing (Consolidation) Act, 1910, s. 111 (2) (*a*) ; 9 Halsbury's Statutes 1043, but finally abolished by the Oxford and St. Albans Wine Privileges (Abolition) Act, 1922 (12 & 13 Geo. 5, c. xxxvi.).

(*r*) Licensing (Consolidation) Act, 1910, s. 92 (7); 9 Halsbury's Statutes 1036. As to the jurisdiction of the Court of the Chancellor over resident members of the University, see Halsbury's Laws of England (Halsbury ed.), Vol. VIII., title "Courts," p. 784, para. 1009.

(*s*) 11 Halsbury's Statutes 357. No order may be made that the premises shall not be used for the purposes of a club : Licensing (Consolidation) Act, 1910, s. 95 (5) ; 9 Halsbury's Statutes 1038.

By charter of 14 Hen. 8 (April 1, 1523), printed in H. E. Salter, "Medieval Archives of the University of Oxford," Vol. I. (*Oxf. Hist. Soc.*, 1917), p. 255, confirmed by Stat. 13 Eliz., c. 20 (1571), the Chancellor, Vice-Chancellor and his deputy are justices of the peace for the counties of Oxford and Berks. The Oxford University (Justices) Act, 1886 ; 11 Halsbury's Statutes 357, authorises the fixing of a place within the precincts of the University at which these officers may sit and act as justices for the counties of Oxford and Berks, and provides that such place shall be deemed to be a petty sessional court house and to be situate within that one of the two counties which the case may require, and that other justices for the county in question may there sit and act with them. For a discussion of the effect of this Act, see H. Rashdall, "The Universities of Europe in the Middle Ages," 2nd ed. (1936), Vol. III., Appendix IX., p. 489.

(*t*) Theatres Act, 1843 (6 & 7 Vict. c. 68), s. 10 ; 19 Halsbury's Statutes 338.

no public exhibition or performance, whether strictly theatrical or not, other than performances in licensed theatres, may take place within the city except with the consent in writing of the Vice-Chancellor and the mayor, or (during the academical vacations intervening between Trinity and Michaelmas terms and between Michaelmas and Lent (*a*) terms respectively) with the consent in writing of the mayor (*a*). By charter (*b*) the University formerly appointed its own coroners, but since March, 1936, the office has ceased to exist (*c*). [244]

(*a*) *Sic.* There is strictly no term so called at Oxford, the term following the Michaelmas term being called Hilary term.

(*a*) Oxford Police Act, 1881 (44 Vict. c. xxxix.), s. 22, as amended by the Oxford Order, 1889 (52 Vict. c. xv.), Art. 28.

(*b*) Charter of 11 Car. I (March 3, 1635-36), printed in A. & Wood, "History and Antiquities of the University of Oxford," published in English by John Gutch (1796), Vol. II., pp. 399-400.

(*c*) Under the Coroners (Amendment) Act, 1926, s. 4; 3 Halsbury's Statutes 781.

PALATINATES

See HUNDREDS.

PARISH

AREA	PAGE	TRANSFER OF POWERS OF VESTRY IN RURAL AND URBAN PARISHES	PAGE
VESTRY AND CHURCHWARDENS	107		
URBAN AND RURAL PARISHES	108	LONDON	109

See also titles:

CHAIRMAN OF PARISH COUNCIL;
CHAIRMAN OF PARISH MEETING;
PARISH ACCOUNTS;
PARISH COUNCIL;
PARISH COUNCILLOR;

PARISH DOCUMENTS;
PARISH IMPROVEMENT;
PARISH MEETINGS;
PARISH PROPERTY;
VESTRY.

Area.—For general purposes of local government, the unit of area was formerly the poor law parish, that is, the parish defined by the Interpretation Act, 1889 (*a*), as meaning "a place for which a separate poor rate is or can be made, or for which a separate overseer is or can be appointed" (*b*). In some parts of the country, particularly in the north,

(*a*) S. 5; 18 Halsbury's Statutes 993.

(*b*) The expression "parish," as defined by s. 68 (4) of the R. & V. Act, 1925 (14 Halsbury's Statutes 688) now means a place for which immediately before April 1, 1927, a separate poor rate was or could be made or a separate overseer was or could be appointed. Urban parishes are parishes comprised in borough and urban districts, and rural parishes are parishes comprised in rural districts (L.G.A., 1933, s. 1 (2) (f); 26 Halsbury's Statutes 300).

the ancient parishes were often very extensive, and were divided for civil purposes into "townships," which acquired the right to appoint their own overseers or to be separately rated. As a survival of this usage it will be found that the "parish" in the sense indicated above is frequently still designated as a "township," but the terms are in effect synonymous. Formerly, there were many intermingled parishes which extended into different governmental districts or even overlapped county boundaries, but successive legislative readjustments (too complicated to be here set out) have produced the result that, with few if any exceptions, each parish is now situate in some one county and some one county district, urban or rural. [245]

Where a parish was bounded by the sea, or by a tidal navigable river, the presumption formerly was that the seashore or the bed of the river was extra parochial, and the boundary of the parish was fixed at the line of high-water mark. The law was altered by sect. 27 of the Poor Law Amendment Act, 1868 (c). It was there provided that every accretion from the sea, whether natural or artificial, and the part of the sea-shore to low-water mark and the bank of every river to the middle of the stream, which on the 25th day of December, 1868 (d), was not included within the boundaries of any parish, should for "civil parochial purposes" be annexed to, and incorporated with, the parish which such accretion, part or bank adjoins, in proportion to the extent of the common boundary. A similar provision but omitting any reference to river or river bank, is included in the L.G.A., 1933 (e). [246]

Vestry and Churchwardens.—Before the passing of the L.G.A., 1894 (f), the only parochial organisation for purposes of both ecclesiastical and civil government lay in the assemblage called the "vestry," which was either "common" or "select," while executive functions remained largely in the hands of the churchwardens. A common vestry was a meeting of the ratepayers of which the incumbent was *ex-officio* the chairman, and in which the decision was by show of hands, or on demand of a poll by plural voting according to the amount of rateability. A select vestry could be appointed for any parish with not less than 800 inhabitants where the Vestries Act, 1831 (g), more commonly known as Hobhouse's Act, had been adopted. The select vestry was representative; the members were elected by ballot, and retired by thirds annually. Some few parishes possessed select vestries which had been established by custom or under local Acts. The L.G.As., from 1894 to 1933, have abolished or transferred to other authorities the civil powers and duties of the churchwardens in rural parishes, and in effect also in urban parishes, thus confining the churchwardens to their duties in connection with the church and ecclesiastical matters. [247]

Urban and Rural Parishes.—The Act of 1894 effected a marked distinction between parishes according as they were "urban" or "rural." An urban parish is one which is situated in a borough or

(c) 10 Halsbury's Statutes 558.

(d) The words in italics were repealed by the Statute Law Revision Act, 1893; 18 Halsbury's Statutes 1013.

(e) S. 144; 26 Halsbury's Statutes 383.

(f) 10 Halsbury's Statutes 773.

(g) 6 Halsbury's Statutes 109.

other urban district, a rural parish is one situate elsewhere which is outside the boundaries of those areas. [248]

Transfer of Powers of Vestry in Rural and Urban Parishes.—In rural parishes all powers, duties and liabilities of the vestry, except those relating to ecclesiastical matters, have been transferred to the parish council or to the parish meeting in a parish without a parish council or to some other authority (*h*) ; and in the case of urban parishes it is provided by sect. 269 (1) of the L.G.A., 1938 (*i*), that there shall be transferred to the council of every borough and urban district, so far as not previously transferred (*k*), the functions and liabilities of the vestry or of any meeting of inhabitants in the nature of a vestry of every parish or place within the borough or urban district, except so far as they relate to the affairs of the church or to ecclesiastical charities. Thus the vestry has in effect ceased to exist except for ecclesiastical purposes, and neither in urban nor in rural parishes exercises any control of local government.

In urban parishes in Wales and Monmouthshire these functions and liabilities had previously been transferred to the councils of boroughs and urban districts by sect. 25 of the Welsh Church Act, 1914 (*l*).

Owing to the abolition of overseers and boards of guardians and other alterations in the law relating to rating, assessment and the relief of the poor, the parish in urban areas has ceased to be a unit of local government (*m*). In rural areas, however, the parish remains an important unit of local government by reason of the functions and powers vested in the parish council or the parish meeting under the L.G.As., 1894 to 1938. [249]

London.—Except for rating purposes (as to which see title LONDON, RATING IN) the parish has ceased to be of practical significance as a municipal unit in London. Every parish in London outside the city (except the Inner and Middle Temples—see title LONDON) is in a metropolitan borough and under the jurisdiction of the borough council (*n*). The powers, duties and liabilities of the former elective vestries and district boards in London were transferred to the borough councils (*o*) who are the overseers of every parish in their boroughs (*p*). Metropolitan borough councils are the rating authorities as respects every parish in the borough (*q*), but all the parishes in metropolitan boroughs are now united and the rating areas coincide with the areas of the boroughs (*r*). Sect. 48 of the L.G.A., 1929 (*s*), applies to the County of London in so far as it amends sect. 57 (as to alteration of parishes) of the L.G.A., 1888 (*t*). Sect. 115 of the L.G.A., 1929, as to

(*h*) L.G.A., 1894, ss. 6 (1), 19 (4); 10 Halsbury's Statutes 778, 790.

(*i*) 26 Halsbury's Statutes 449.

(*k*) Prior to the Act of 1938 the powers of the vestry in numerous urban parishes had been transferred to the borough or district council under s. 33 of the L.G.A., 1894, or under local Acts.

(*l*) 6 Halsbury's Statutes 1180.

(*m*) London Government Act, 1899, s. 17; 11 Halsbury's Statutes 1235.

(*n*) *Ibid.*, s. 4.

(*o*) *Ibid.*, s. 11 (1).

(*p*) R. & V. (Apportionment) Act, 1928, s. 7 (2); 14 Halsbury's Statutes 723.

(*q*) See London Government Act, 1899, s. 16 (1) (c); 11 Halsbury's Statutes 1234.

(*r*) 10 Halsbury's Statutes 918.

(*s*) *Ibid.*, 732.

parish property of former guardians applies to London, including the city. [250]

Under the City of London (Union of Parishes) Act, 1907 (*t*), the parishes in the City were united and the powers thereof vested in the common council, which became overseers of the united parish of the City of London.

The provisos to sect. 122 (1) of the Education Act, 1921 (*u*), as to adjustment of education expenses in respect of parishes do not apply to London, but the Board of Education can make schemes for the application of money arising from endowments (*a*).

For Acts relating to the former duties of vestries, see title VESTRY. For ecclesiastical purposes vestries may still be held for metropolitan parishes. Sect. 23 of the London Government Act, 1899 (*b*), safeguards the powers and duties of vestries as regards church property and affairs. By schemes made under the Act the church affairs of vestries were vested in the inhabitants of ecclesiastical districts, with provision for meetings of inhabitants for the purpose of dealing with church affairs. [251]

(*t*) 14 Halsbury's Statutes 590.
(*a*) S. 41; *Ibid.*, 132.

(*u*) 7 Halsbury's Statutes 195.
(*b*) 11 Halsbury's Statutes 1237.

PARISH ACCOUNTS

STATUTORY REQUIREMENTS	PAGE	INSPECTION OF ACCOUNTS	PAGE
OFFICERS' ACCOUNTS	- 110	AUDIT - - - - -	- 111
ACCOUNTS TO BE KEPT	- 111		- 112

*See also titles : AUDIT ;
CLERK TO PARISH COUNCIL ;
PARISH.*

Statutory Requirements.—Every parish council, and the chairman of the parish meeting for a rural parish not having a separate parish council, shall keep such accounts as may be prescribed by regulations of the Minister of Health of the receipts and payments of the council or the parish meeting, as the case may be (*a*). The accounts are to be made up yearly to March 31, but the Minister of Health may fix some other date, either generally or in any special case (*b*). A special case would arise where an extraordinary audit is directed by the Minister, usually because some irregularity in accounts has been suggested or suspected. A form of financial statement of the accounts of parish councils and also of parish meetings of parishes

(*a*) L.G.A., 1933, s. 193 (0); 26 Halsbury's Statutes 411.
(*b*) *Ibid.*, s. 223.

without a parish council, has been prescribed by regulations made, respectively, in 1900 (*c*) and 1911 (*d*). [252]

Officers' Accounts.—Every officer employed by a parish council must at such times during the continuance of his office, or within three months after ceasing to hold office, and in such manner as the council direct, make out and deliver to them, or as they direct, a true account in writing of all money and property committed to his charge, and of his receipts and payments, with vouchers and other documents and records supporting the entries therein, and a list of persons from whom or to whom money is due in connection with his office, showing the amount due from or to each such person (*e*). Every officer of a parish council who pays moneys into the banking account of the council, or of their treasurer, must keep a copy of the particulars he is required to enter on the bank paying-in slips, and must produce the book containing these particulars for examination as and when required by the council or the district auditor. In the case of each cheque paid in the officer is required to enter both on the paying-in slip and on the counterfoil some reference, such as the number of the receipt given or the name of the debtor, which will connect the cheque with the debt in discharge of which it was rendered (*f*). [253]

Accounts to be kept.—General guidance as to parish accounts supplementing the above statutory and departmental provisions is obtainable by means of a study of the prescribed form of financial statement for a parish council and for a parish meeting. The accounts are divided into three sections : General Account, Adoptive Acts, and Charities. Receipts from and payments out of loans must be kept distinct from other receipts and payments. A separate account in respect of each adoptive Act must be kept. [254]

Where a charity is administered by a parish council, the accounts of the charity form part of the accounts of the council. Where, however, the council merely appoint trustees of the charity, but do not themselves administer it, the accounts of the charity are distinct from those of the parish council and will neither form part of their accounts nor be subject to audit by the district auditor. But the accounts of all parochial charities (not being ecclesiastical charities) must be laid annually before the parish meeting (*g*).

Only one banking account should be kept for all revenue purposes. Where loans for different purposes are obtained separate accounts need not be opened with the treasurer in respect of the expenditure for each purpose of the loans, except in the case of loans from the Public Works Loan Commissioners.

The accounts of the parish meeting of a parish not having a parish council will follow the lines above described where such bodies have any financial transactions. [255]

Inspection of Accounts.—The accounts of the parish council and of their treasurer are to be open to the inspection of any member of

(*c*) S.R. & O., Rev. 1904, Vol. IX., 155.

(*d*) S.R. & O., 1911, No. 293.

(*e*) L.G.A., 1933, s. 120.

(*f*) The Accounts (Payment into Bank) Order, December 28, 1922 (S.R. & O., 1922, No. 1404).

(*g*) L.G.A., 1894, s. 14 (6); 10 Halsbury's Statutes 787.

the council, and any such member may make a copy thereof or an extract therefrom (h). [256]

Audit.—The accounts of every parish council, and of every parish meeting for a rural parish not having a parish council, also of any committee appointed by any such council or meeting, and of any joint committee of which one of the constituent bodies is a parish council, are subject to audit by the district auditor (i).

The parish council, or the parish meeting in a parish without a parish council, and any joint committee must prepare and submit to the district auditor at every audit a financial statement of their accounts, in duplicate, in the prescribed form and containing the prescribed particulars (k). (The form and particulars have not so far been prescribed.)

The financial statement of the accounts and any report made by the auditor on the accounts of a parish council or parish meeting are to be open to the inspection, without payment, of any local government elector for the parish or area of the authority, and any such elector may make a copy thereof or an extract therefrom, and copies thereof must be delivered to any such elector on payment of a reasonable sum for each copy (l). See title AUDIT. [257]

(h) L.G.A., 1933, s. 283 (3); 26 Halsbury's Statutes 455.

(i) *Ibid.*, s. 210.

(k) *Ibid.*, s. 222.

(l) *Ibid.*, s. 283 (4), (8) and Audit Regulations, 1934, r. 7; S.R. & O., 1934, No. 1188.

PARISH BOUNDARIES

See AREAS OF LOCAL GOVERNMENT; BEATING THE BOUNDS.

PARISH CHARITIES

See CHARITIES.

PARISH COUNCIL

PAGE	PAGE
ESTABLISHMENT OF PARISH COUNCILS	
COUNCILS — — — — — 113	Joint Committees — — — — 118
Establishment — — — — — 113	POWERS AND DUTIES — — — — 118
Grouped Parishes — — — — — 114	Under the Act of 1894 — — — — 118
CONSTITUTION OF PARISH COUNCILS	Under the Act of 1933 — — — — 119
COUNCILS — — — — — 114	Under other Acts — — — — 119
MEETINGS AND PROCEEDINGS	Officers — — — — 120
Place of Meeting — — — — — 114	Legal Proceedings — — — — 120
Convening of Meetings — — — — — 115	Delegation of Powers of R.D.C. — — — — 121
Proceedings at Meetings — — — — — 116	Parochial Committee — — — — 121
Minutes — — — — — 116	FINANCIAL PROVISIONS — — — — 121
Annual Meeting — — — — — 117	Expenses — — — — 121
COMMITTEES — — — — — 117	Borrowing — — — — 122
Committees — — — — — 117	Temporary Loans — — — — 123
	Power to Re-borrow — — — — 123

See also titles :

ADMISSION TO MEETINGS ;
ALLOTMENTS COMMITTEES ;
CHAIRMAN OF PARISH COUNCIL ;
CHARITIES ;
CLERK OF PARISH COUNCIL ;
DIVERSION AND STOPPING UP OF
HIGHWAYS ;

MEETINGS :
PARISH ;
PARISH ACCOUNTS ;
PARISH COUNCILLOR ;
PARISH DOCUMENTS ;
PARISH MEETING ;
STANDING ORDERS.

ESTABLISHMENT OF PARISH COUNCILS

This title deals with the constitution, powers, duties and procedure of parish councils. It is based generally on the L.G.A.s. of 1894 (*a*) and 1933 (*b*), referred to as "the Act of 1894" and "the Act of 1933." [258]

Establishment.—Parish councils owe their origin to the Act of 1894 and can exist only in rural parishes. A rural parish is a parish within the district of an R.D.C. Where a rural parish has not a separate parish council the county council are required to establish a parish council for that parish if the population is 300 or upwards, or if, in a parish with a population of 200 or upwards but under 300, the parish meeting so resolves. The county council may, in a parish having a population of less than 200, by order establish a parish council if the parish meeting so resolves (*c*). "Population" means population according to the last published census (*d*). Where a rural parish is co-extensive with a rural district a separate election of a parish council is not held for the parish, unless the county council so direct, but the

- (*a*) 10 Halsbury's Statutes 773.
- (*b*) 26 Halsbury's Statutes 295.
- (*c*) L.G.A., 1933, s. 43 ; 26 Halsbury's Statutes 326.
- (*d*) See s. 296 ; *ibid.*, 463.

R.D.C. in addition to their own functions have the functions of, and are to be deemed to be, the parish council (e). [259]

Grouped Parishes.—A parish may be grouped with some neighbouring parish or parishes under a common parish council by an order of the county council (f). No parish, however, may be so grouped without the consent of the parish meeting. [260]

CONSTITUTION OF PARISH COUNCILS

The parish council consists of the chairman and the parish councillors (g). The number of parish councillors for each parish, or group of parishes, shall be such, not being less than five or more than fifteen, as may be fixed from time to time by the county council. The term of office of a councillor is three years. They retire together on April 15 in every third year beginning with 1937. Their places are then to be filled by the newly-elected councillors who come into office on that day (h).

Every parish council is a body corporate by the name of the parish council, with the addition of the name of the parish. The parish council have perpetual succession, and may hold land for the purposes of their powers and duties without licence in mortmain (i). In contrast, however, to the general rule for corporate bodies, they have no common seal, and the Act directs that any act of the council may be signified by an instrument under the hands, or, if an instrument under seal is required, under the hands and seals, of two members of the council, and that any instrument purporting to have been so executed shall, until the contrary is proved, be deemed to have been so executed (j). [261]

MEETINGS AND PROCEEDINGS

Place of Meeting.—In any rural parish in which there is no suitable public room vested in the parish council which can be used free of charge, a suitable room in the schoolhouse of a public elementary school, or a suitable room the expense of which is payable out of any rate, may be used, free of charge at all reasonable times, and after reasonable notice, for any of the following purposes: (a) the parish meeting or meetings of the parish council or an inquiry held by any Government department or by a local authority; (b) meetings convened by the chairman of the parish meeting or by the parish council; (c) the administration of public funds within or for the purposes of the parish, where such funds are administered by any committee or officer appointed either by the parish meeting or the parish council, or by a county or district council (k). [262]

The enactment referred to does not directly authorise (though it does not apparently preclude) use of a room in a private dwelling-house, nor does it authorise any interference with the hours during which a room in a schoolhouse is used for educational purposes, nor,

(e) L.G.A., 1933, s. 43 (3).

(f) *Ibid.*, s. 45.

(g) *Ibid.*, s. 48 (1); 26 Halsbury's Statutes 329.

(h) *Ibid.*, s. 50.

(i) *Ibid.*, s. 48 (2).

(j) *Ibid.*, s. 48 (3).

(k) *Ibid.*, s. 128 (1); 26 Halsbury's Statutes 373.

if the room is used for the administration of justice or police, does it authorise any interference with the hours during which it is used for these purposes (*l*). In a circular sent to school boards and school managers on November 30, 1894, the Education Department stated that for the four statutory meetings of the parish council, fourteen clear days' notice should be served by the parish council where the use of a schoolroom is desired, but that for a special meeting of the parish council, three clear days' notice would ordinarily be sufficient, although longer notice should, as a general rule, be given.

Neither a parish council nor a parish meeting may be held in premises licensed for the sale of intoxicating liquor, except where no other suitable room is available for such meeting either free of charge or at a reasonable cost (*m*). [263]

Convening of Meetings.—The chairman may call a meeting of the parish council at any time. If the chairman refuses to call a meeting of the council after a requisition for that purpose, signed by two members of the council, has been presented to him, any two members of the council may forthwith, on that refusal, convene a meeting of the council. If the chairman, without so refusing, does not within seven days after such presentation call a meeting of the council, any two members of the council may, on the expiration of those seven days, forthwith convene a meeting.

Three clear days at least before a meeting : (a) notice of the intended time and place of the meeting must be affixed in some conspicuous place in the parish ; and where the meeting is called by members of the council, the notice must be signed by those members and must specify the business to be transacted ; (b) a summons to attend the meeting, specifying the business to be transacted, and signed by the clerk of the council, must be left at or sent by post to the usual residence of every member of the council. It is provided, however, that want of service on any member of the council shall not affect the validity of a meeting (*n*).

The requirement that at least three clear days' notice of a meeting of a parish council shall be given, means that the notice must be sent on such a day as will allow an interval of three clear days between the service of the notice and the date of the meeting. Sunday may apparently be reckoned as one of the days.

Only the business which is specified in the notice can be transacted at the meeting (*o*).

A parish council must hold not less than four meetings in each year, of which one is the annual meeting (*p*).

A meeting of the parish council must be open to the public, unless the council otherwise direct (*q*). Such direction should relate only to a particular meeting. Admission of the public should be the general rule. As to admission of representatives of the press, see title ADMISSION TO MEETINGS. [264]

(*l*) L.G.A., 1933, s. 128 (1); 26 Halsbury's Statutes 373.

(*m*) L.G.A., 1933; Sched. III., Part IV., r. 1 (5), and Part VI., r. 1 (4); 26 Halsbury's Statutes 499, 502.

(*n*) *Ibid.*, Sched. III., Part IV., rr. 2, 3; *ibid.*, 499, 500.

(*o*) *Longfield Parish Council v. Wright* (1918), 88 L. J. (Ch.) 119; 33 Digest 31, 154.

(*p*) L.G.A., 1933; Sched. III., Part IV., r. 1 (1).

(*q*) *Ibid.*, r. 1 (4).

Proceedings at Meetings.—At a meeting of the parish council the chairman of the council shall preside. If he is absent, the vice-chairman shall preside. If both are absent, such councillor as the members present choose shall preside (*r*). No business may be transacted at a meeting unless at least one-third of the whole number of the council are present; but the quorum must not be less than three members (*s*). Where, however, more than one-third of the members become disqualified at the same time, then until the number in office is increased to not less than two-thirds of the whole number of the council, the quorum shall be determined by reference to the number of members remaining qualified (*t*). Voting at meetings of a parish council is required to be by show of hands, and on the requisition of any member the voting shall be recorded so as to show whether each member present and voting gave his vote for or against the question (*u*). The names of members present at a meeting of the council must be recorded (*a*). All acts of the council and all questions coming before them are to be done and decided by a majority of the members present and voting thereon. In case of equality of votes the presiding chairman has a second or a casting vote (*b*).

Every cheque or other order for the payment of money by a parish council must be signed by two members of the council (*c*). [265]

A parish council may make, vary and revoke standing orders for the regulation of their proceedings and business. The standing orders will be subject to the provisions of the Act of 1933; those provisions, that is, cannot be varied by a standing order (*d*).

Model standing orders relating to the proceedings and business of local authorities, including parish councils, and a separate set relating to contracts, have been prepared by the M. of H. (*e*).

The Act of 1933 contains provisions for preventing the proceedings of parish councils from being declared invalid upon technical grounds. It is provided that the proceedings of a parish council or of a committee thereof are not invalidated by any vacancy among their members, or by any defect in the election or qualification of any members thereof (*f*). Until the contrary is proved, every meeting in respect of the proceedings whereof a minute has been duly made and signed is to be deemed to have been duly convened and held, and all the members of the meeting are to be deemed to have been duly qualified; and when the proceedings are those of a committee, it shall be deemed to have been duly constituted, and to have had power to deal with the matters referred to in the minutes (*g*). [266]

Minutes.—Minutes of the proceedings of a parish council, or of any committee thereof, must be drawn up and entered in a book kept for the purpose and signed at the same or next ensuing meeting by the person

(*r*) L.G.A., 1933, Sched. III., Part IV., r. 3; 26 Halsbury's Statutes 500.

(*s*) *Ibid.*, Sched. III., Part IV., r. 4.

(*t*) *Ibid.*, Sched. III., Part V., r. 6.

(*u*) *Ibid.*, Sched. III., Part IV., r. 5.

(*a*) *Ibid.*, Sched. III., Part V., r. 2.

(*b*) *Ibid.*, Sched. III., Part V., r. 1.

(*c*) *Ibid.*, s. 193 (8); 26 Halsbury's Statutes 411.

(*d*) *Ibid.*, Sched. III., Part V., r. 4.

(*e*) These Model Standing Orders are obtainable from H.M. Stationery Office, Kingsway, London, W.C.2.

(*f*) L.G.A., 1933, Sched. III., Part V., r. 5; 26 Halsbury's Statutes 501.

(*g*) *Ibid.*, Sched. III., Part V., r. 3 (2).

presiding thereat. Any minute purporting to be so signed shall be received in evidence without further proof (*h*). The duty of keeping the minute book ordinarily devolves upon the clerk to the council, and for that purpose he should attend every meeting, including any meeting convened by members upon the refusal or failure of the chairman to convene a meeting. The minutes should be read to the members, and after their correctness has been affirmed by a resolution, the chairman presiding at the time the minutes are confirmed should sign them as a correct record. [267]

Annual Meeting.—The annual meeting of the parish council must be held on or within fourteen days after the fifteenth day of April in every year (*i*). The notice of the annual meeting must contain the like particulars, and be given in the like manner, as the notice of an ordinary meeting of the parish council. It is provided that the first business at the annual meeting shall be to elect a chairman (*k*). It would appear, however, that in a year in which an election of parish councillors is held, that is in 1940 and every third year thereafter, the parish councillors should sign the declarations of acceptance of office before the above business is taken. [268]

COMMITTEES

Committees.—A parish council may appoint a committee for any such general or special purpose as in the opinion of the council would be better regulated and managed by a committee, and may delegate to the committee, with or without restrictions or conditions, as they think fit, any functions exercisable by the council with respect either to the whole or a part of the parish, except the power of levying, or issuing a precept for, a rate, or of borrowing money. The number of members of a committee, their term of office, and the area within which the committee is to exercise its authority, are to be fixed by the council (*l*). A committee appointed under this provision (other than a finance committee) may include persons other than members of the parish council, but two-thirds of the committee must be members of the council. Every member of a committee who, at the time of his appointment, was a member of the council, upon ceasing to be such, ceases also to be a member of the committee, unless he has been re-elected as a councillor not later than the day of his retirement (*m*). This provision does not authorise the appointment of a committee for any purpose for which the parish council are authorised to appoint a committee by any other enactment (including any enactment in the Act of 1933) (*n*). As to committees under the Allotments Acts, see title *ALLOTMENTS COMMITTEES*, Vol. I., p. 251. The parish council may resume at any time the powers which they have delegated to a committee (*o*). A parish councillor who is not a member of the committee would ordinarily have no powers to attend and take part in the proceedings of the committee. The attendance as spectators

(*h*) L.G.A., 1933, Sched. III., Part V., r. 3 (1).

(*i*) *Ibid.*, Sched. III., Part IV., r. 1 (1); 26 Halsbury's Statutes 499.

(*k*) *Ibid.*, s. 49 (2).

(*l*) *Ibid.*, s. 85 (1), (2); 26 Halsbury's Statutes 352.

(*m*) *Ibid.*, s. 85 (3), (4).

(*n*) *Ibid.*, s. 85 (5).

(*o*) *Huth v. Clarke* (1890), 25 Q. B. D. 391; 33 Digest 17, 68.

of persons who are not members might, however, be dealt with by a standing order made by the parish council. [260]

Joint Committees.—A parish council may concur with any one or more local authorities in appointing a joint committee for any purpose in which they are jointly interested, and may delegate to the committee, with or without restrictions or conditions, any functions of the parish council relating to the purpose for which the committee is formed, except the power of precepting for a rate, or of borrowing money. Every member of the committee who at the time of appointment was a member of the appointing authority, upon ceasing to be a member of that authority, also ceases to be a member of the joint committee, unless he has been re-elected a member of the authority not later than the day of his retirement (*p*). The person presiding at a committee or joint committee is entitled to exercise a second or a casting vote (*q*). [270]

POWERS AND DUTIES

Under the Act of 1894.—The principal powers of the parish council under unrepealed provisions of the L.G.A., 1894 (*r*), are as follows : The powers, duties and liabilities of the vestry except so far as relates to the affairs of the church or ecclesiastical charities ; and any powers, duty or liability transferred by the Act from the vestry to any other authority ; the powers, duties and liabilities of the churchwardens, except so far as they relate to the affairs of the church or charities or are powers and duties of overseers ; the powers, duties and liabilities of the overseers or churchwardens and overseers as to the provision of parish books and of a fire engine, fire escape, or matters relating thereto (*s*) ; the power and duty of carrying out such of the adoptive Acts as have been adopted by the parish meeting (*t*) ; power to provide or acquire land for a recreation ground and for public walks ; power to apply to the Minister of Agriculture and Fisheries under sect. 9 of the Commons Act, 1876 (*u*) ; power to exercise with respect to any recreation ground, village green, open space or public walk, which is for the time being under their control, or to the expense of which they have contributed, such powers as may be exercised by an urban authority under

(*p*) L.G.A., 1933, s. 91 ; 26 Halsbury's Statutes 355.

(*q*) *Ibid.*, s. 96 (2).

(*r*) See ss. 6 (1), 7 (1) and 8 (1) ; 10 Halsbury's Statutes 778—781.

(*s*) The power to provide fire engines, etc., is given by s. 29 of the Poor Law Amendment Act, 1807 (10 Halsbury's Statutes 557). The power may be exercised if the watching provisions of the Lighting and Watching Act, 1853, s. 44 (8 Halsbury's Statutes 1201), under which fire engines may be provided, are not in force, or the R.D.C. have not been invested in relation to the parish with the urban powers of s. 171 of the P.H.A., 1875 (13 Halsbury's Statutes 690), with respect to fires. See also Parish Fire-engineed Act, 1898 (10 Halsbury's Statutes 833), which empowers the parish council to agree with the council of any neighbouring borough or district that any fire engines with their appurtenances and firemen provided by the borough or district shall be used for extinguishing fires in the parish.

(*t*) As to the adoptive Acts, see titles **BATHS AND WASHHOUSES ; BURIALS AND BURIAL GROUNDS ; LIGHTING AND WATCHING ACT, 1853 ; LIBRARIES ; AND PARISH IMPROVEMENT.**

(*u*) 2 Halsbury's Statutes 585. Under this provision the Minister upon application by persons interested in any common is required to issue information and directions as to the mode in which applications for the regulation or enclosure of commons are to be made to him, and explanations with regard to the law for the regulation and enclosure of commons.

various provisions in the P.H.As. (a) ; power to utilise any well, spring or stream within the parish and provide facilities for obtaining water therefrom, but so as not to interfere with the rights of any corporate body or person ; power to deal with any pond, pool or open ditch, drain or place containing or used for the collection of any drainage, filth, stagnant water or matter likely to be prejudicial to health, by draining, cleansing, covering it or otherwise preventing it from being prejudicial to health, but so as not to interfere with any private right, or the sewage or drainage works of any local authority ; power to acquire by agreement any right of way, whether within their parish or any adjoining parish, the acquisition of which is beneficial to the inhabitants of the parish or any part thereof ; power to execute any works (including works of maintenance or improvement) incidental to or consequential on the exercise of any of the foregoing powers, or in relation to any parish property, not being property relating to the affairs of the church or held for an ecclesiastical charity ; power to contribute towards the expense of doing any of the things above mentioned, or to agree or combine with any other parish council to do or contribute towards the expense of doing any of the things above mentioned. [271]

The consent of the parish council is required for the stopping up or diversion of a public right of way within the parish ; and for a declaration that a highway in the parish is unnecessary for public use and not repairable at the public expense. The council must give public notice of a resolution to give any such consent, and the resolution will not operate unless it is confirmed at a council meeting held not less than two months after the public notice is given ; nor if a parish meeting held before confirmation resolves that the consent ought not to be given (b). See, further, title DIVERSION AND STOPPING UP OR HIGHWAYS, Vol. V., p. 157.

Subject to the statutory restriction on their expenditure, the parish council may undertake the repair and maintenance of all or any of the public footpaths within their parish, not being footpaths at the side of a public road, but this power is not to relieve any other authority or person from any liability with respect to such repair and maintenance (c). [272]

Under the Act of 1933.—The following powers are conferred on parish councils by provisions in the Act of 1933 which replace, with minor amendments, corresponding provisions in the Act of 1894, namely, powers and duties relating to the acquisition of land, the provision or acquisition and furnishing of buildings for the purpose of parish offices, parish meetings or public meetings, the sale, exchange or letting of land belonging to the parish council. See title PARISH PROPERTY, *post*, pp. 188, 189. [273]

Under other Acts.—A parish council may, and if required by the Minister of Health shall, provide, (a) a mortuary for the reception of dead bodies before interment ; (b) a post-mortem room for the reception of dead bodies during the time required to conduct any post-mortem examination ; and may make bye-laws with respect to the management

(a) These provisions are : P.H.A., 1875, ss. 164, 183, 184 ; 13 Halsbury's Statutes 693, 705 ; and P.H.A. Amendment Act, 1890, s. 44 ; *Ibid.*, 841.

(b) L.G.A., 1894, s. 18 (1) ; 10 Halsbury's Statutes 785.

(c) *Ibid.*, s. 18 (2).

and charges for the use of any such place. A parish council may also provide for the interment of any dead body which may be received into their mortuary (d). [274]

In any case where complaint is made to the county council by the parish council or parish meeting of any parish in a rural district in the county that the council of that district have failed to exercise their powers under the Housing Act, 1936, in any case where those powers ought to have been exercised, the county council may cause a public local inquiry to be held, and if thereupon they are satisfied that there has been such a failure on the part of the district council, they may make an order declaring the district council to be in default and transferring to themselves all or any of the powers of the district council under the Act with respect to the whole or any part of the district (e).

The parish council, or the parish meeting of a parish without a parish council, are empowered to incur reasonable expenditure in the maintenance, repair and protection of any war memorial within their district which is vested in them. The expenditure must not exceed a rate of one penny in the pound, and it is subject to the approval of the county council (f). The Act does not apply to a war memorial provided or maintained under any other statutory power (g).

The parish council are a "minor local authority" under the Education Act, 1921 (h), and as such may appoint for a provided school, two representatives, and for a non-provided school, one representative, on the board of managers of a public elementary school which appears to the county council to serve the parish. [275]

Officers.—As to the appointment by the parish council of a clerk, see title CLERK OF PARISH COUNCIL, Vol. III., p. 209. The council may also appoint one of their number or some other fit person to be treasurer, without remuneration (i). The council shall require the treasurer to give, or may themselves take, such security for the faithful execution of his office as may be directed by the county council. They must defray the cost in the case of persons not employed by them who may be entrusted with money. In any other case they *may* defray such cost. These securities are to be produced to the auditor at the audit of the council's accounts (k). [276]

Legal Proceedings.—Where a parish council deem it expedient for the promotion or protection of the inhabitants of the parish, they may prosecute or defend any legal proceedings (l). The council may by resolution authorise any member or officer of the council, either generally or in respect of any particular matter, to institute or defend on their behalf proceedings before any court of summary jurisdiction, or to appear on their behalf before such a court in any proceedings instituted by them or on their behalf or against them (m).

(d) P.H.A., 1936, s. 198; 29 Halsbury's Statutes 458.

(e) Housing Act, 1936, s. 169 (1); 29 Halsbury's Statutes 672.

(f) War Memorials (Local Authorities' Powers) Act, 1928; 10 Halsbury's Statutes 875.

(g) *Ibid.*, s. 3.

(h) See ss. 30, 170 (15); 7 Halsbury's Statutes 146, 214.

(i) L.G.A., 1938, s. 114 (4); 26 Halsbury's Statutes 367.

(k) *Ibid.*, s. 119 (3), (4).

(l) *Ibid.*, s. 276.

(m) *Ibid.*, s. 277.

Unless otherwise so provided, a public notice required to be given by the parish council shall be given, (a) by affixing the notice on or near the principal door of each church or chapel in the parish; and (b) by posting it in some conspicuous place or places within the parish; and (c) in such other manner as appears to the council to be desirable for giving publicity to the notice (n). [277]

Delegation of Powers of R.D.C. Parochial Committee.—Sect. 87 of the Act of 1933 (o) provides that the R.D.C., at a meeting specially convened for the purpose, may appoint for one or more parishes within their district a parochial committee consisting either wholly of members of the district council, or partly of such members and partly of local government electors for the parish or parishes. Where a parochial committee is appointed consisting partly of members of the district council and partly of other persons, those other persons, as respects any parish having a separate parish council, shall be, or be selected from, the members of the parish council. The district council may delegate to the parochial committee, with or without restrictions or conditions, any functions exercisable by them within the parish or parishes for which the committee is formed, except the power of levying a rate or borrowing money. If the R.D.C. refuse to appoint a parochial committee for a parish after receiving a request to that effect from the parish council or parish meeting of a parish within the district, the parish council or parish meeting may petition the Minister of Health, and the Minister may by order direct the district council to appoint a parochial committee for that purpose.

Where a parish council act as a parochial committee by delegation from the R.D.C., they are entitled, whilst so acting, to the services of the clerk of the district council, unless the district council otherwise direct (p).

Where the R.D.C. propose to carry out works for the sewerage or water supply of any contributory place, they must give notice to the parish council of any parish for which the works are to be provided before adopting plans for the works (q). [278]

FINANCIAL PROVISIONS

Expenses.—The expenses of a parish council or of a parish meeting (including those of a poll consequent on a parish meeting) are chargeable separately on the parish. When there is a parish council the expenses of the parish meeting and poll are payable by the council. The sums required to be raised in any financial year, i.e. the year ending on March 31 (r) to meet the expenses of the council (*other than under the Adoptive Acts*) must not, without the consent of the parish meeting, exceed a rate of fourpence in the pound on the rateable value of the parish in the valuation list in force at the commencement of the year, or such higher rate as the Minister of Health may by order allow; and they must in no case exceed eightpence in the pound, or such higher rate as the Minister may by order allow (s). Without the

(n) L.G.A., 1933, s. 287 (1).

(o) 26 Halsbury's Statutes 353.

(p) L.G.A., 1933, s. 114 (3); 26 Halsbury's Statutes 367.

(q) P.H.A., 1936, ss. 15 (4), 116 (4); 29 Halsbury's Statutes 334, 409.

(r) L.G.A., 1933, s. 305; 26 Halsbury's Statutes 466.

(s) *Ibid.*, s. 193 (1), (2), (3).

consent of the parish meeting and the approval of the county council, a parish council may not incur any expense or liability which will involve a loan (*t*). [279]

The expenses of a parish council in the execution of their ordinary powers (*i.e.* powers under the Acts of 1894 and 1933) are leviable as an "additional item" of the general rate on the parish, and the council obtain funds for the purpose of defraying these expenses by means of precepts issued to the R.D.C. (*u*). Expenses under the Adoptive Acts, other than the Lighting and Watching Act, 1883 (*a*), are similarly chargeable and are raised in the same manner. The precept should set out separately, in addition to the amount of the general expenses under the Acts of 1894 and 1933, the amount required in connection with each of the different Adoptive Acts. Expenses under the Lighting and Watching Act are defrayed by a "special rate" leviable on the parish, except where the amount is under £10, or is less than the product of a penny in the pound (*b*). [280]

Borrowing.—A parish may borrow, with the consent of the Minister of Health and the county council, such sums as are required for any of the following purposes: (a) acquiring any land which they have power to acquire; (b) erecting any building which they have power to erect; (c) the execution of any permanent work, the provision of plant, or the doing of any other thing which they have power to do, if, in the opinion of the Minister of Health and of the county council, the cost ought to be spread over a term of years; (d) any other purpose for which they are authorised under any enactment or statutory order to borrow (*c*).

A parish council may not borrow otherwise than by way of mortgage (sect. 196), and all moneys borrowed by them are to be charged indifferently on all the revenues of the council (*d*). The balance of any unexpended loan which is not required for the purpose for which it was borrowed may be applied, with the consent of the Minister, and subject to any conditions he may impose, to any other purpose for which capital money may be applied (*e*). The mortgage must be by deed, in the form prescribed by the Minister or a form to the like effect (*f*). Where a loan is made by the Public Works Loan Commissioners, the mortgage must be in the form prescribed by that body (*g*). A person entitled to a mortgage may transfer it by deed in the prescribed form or a form to the like effect (*h*). The clerk is required to keep at the office of the parish council a register of mortgages (including transfers) created under the above enactments. The register must be open at all reasonable hours to public inspection, without payment (*i*). Every sum borrowed by way of mortgage must be paid off either by equal yearly or half-yearly instalments of principal or of principal and interest;

(*t*) L.G.A., 1933, s. 193 (*4*).

(*u*) *Ibid.*, s. 193.

(*a*) 8 Halsbury's Statutes 1186.

(*b*) R. & V. Act, 1925, ss. 2 (5), (6) and 3; 14 Halsbury's Statutes 620, 621.

(*c*) L.G.A., 1933, s. 195; 26 Halsbury's Statutes 412.

(*d*) *Ibid.*, s. 197 (1).

(*e*) *Ibid.*, s. 202.

(*f*) A form of Mortgage and Transfer was prescribed by the Local Government (Form of Mortgages and Transfers) Regulations, 1934; S.R. & O., 1934, No. 620.

(*g*) L.G.A., 1933, s. 205; 26 Halsbury's Statutes 417.

(*h*) *Ibid.*, s. 206.

(*i*) *Ibid.*, s. 207.

or by means of a sinking fund ; or partly by one of those methods and partly by another or others of them (k). [281]

Temporary Loans.—A parish council may, without the consent of the sanctioning authority, borrow by way of temporary loan or overdraft from a bank or otherwise, any sums required temporarily, (a) for the purpose of defraying expenses pending the receipt of revenues receivable in respect of the period of account in which those expenses are chargeable and taken into account in the estimates made by the council for that period ; and (b) for the purpose of defraying, pending the raising of a loan which the council have been authorised to raise, expenses intended to be defrayed by means of the loan (l). [282]

Power to Re-borrow.—A parish council may borrow, without the consent of any sanctioning authority, for the purpose of (a) paying off any moneys previously borrowed by the council which are intended to be repaid forthwith ; or (b) replacing moneys which, during the preceding twelve months, have been temporarily applied from other moneys of the council in repaying moneys previously borrowed, and which at the time of such repayment it was intended to replace by borrowed moneys (m). [283]

(k) L.G.A., 1923, s. 212.

(m) *Ibid.*, s. 216.

(l) *Ibid.*, s. 215.

PARISH COUNCIL, CHAIRMAN OF

See CHAIRMAN OF PARISH COUNCIL.

PARISH COUNCIL, CLERK TO

See CLERK TO PARISH COUNCIL.

PARISH COUNCILLOR

PAGE		PAGE	
ELECTION OF COUNCILLORS	-	RETIREMENT OF COUNCILLORS	-
PARISH WARDS	-	VACATION OF SEAT BY RESIGNA-	-
QUALIFICATION OF COUNCILLORS	124	TION, ABSENCE, ETC.	-
DISQUALIFICATION OF COUNCILLORS	125	CASUAL VACANCIES	-
EFFECT OF COUNCILLOR'S INTEREST		OMISSION TO HOLD ELECTION	-
IN CONTRACT WITH THE COUNCIL	125	POWERS OF COUNTY COUNCIL	-
ACCEPTANCE OF OFFICE	-	127	

*See also titles : CHAIRMAN OF PARISH COUNCIL ;
ELECTIONS ;
PARISH COUNCIL.*

Election of Councillors.—The number of parish councillors for each parish, or group of parishes, shall be such number, not being less than five nor more than fifteen, as may be fixed from time to time by the county council. They are elected by the local government electors at a parish meeting or at a poll consequent thereon. The county council, however, at the request of the parish council or parish meeting, may direct that the parish councillors for a parish, or, if the parish is divided into wards, for the wards of the parish, shall cease to be elected at a parish meeting and shall be elected by means of nomination and, if necessary, a poll (a). The mode of election is regulated by the Parish Councillors Election Rules, 1934 (b). See, further, title ELECTIONS, Vol. V., p. 256. [284]

Parish Wards.—A parish may be divided into wards for the election of parish councillors by an order of the county council. An application for such division may be made either by the parish council or by not less than one-tenth of the local government electors of the parish (c). In a parish divided into wards, a separate parish meeting for the election of parish councillors must be held for each ward (d), but the wards exist merely for the purpose of electing parish councillors.

Any local government elector of the parish may be nominated for election in any ward, and a candidate for a ward need not be a local government elector of the ward. The nomination paper must, however, be signed by two local government electors of the ward in which the candidate is standing for election (e). [285]

Qualification of Councillors.—A person is qualified to be elected and to be a member of the parish council (unless he is disqualified by

(a) L.G.A., 1933, s. 50 ; 26 Halsbury's Statutes 330.

(b) S.R. & O., 1934, No. 1818.

(c) L.G.A., 1933, s. 52 ; 26 Halsbury's Statutes 331.

(d) *Ibid.*, s. 52 (5).

(e) Parish Councillors Election Rules, 1934, r. 3 (1) ; S.R. & O., 1934, No. 1818.

virtue of the Act of 1933, or any other enactment) if he is of full age and a British subject, and (a) he is a local government elector for the parish; or (b) he owns freehold or leasehold land within the parish; or (c) he has during the whole of the twelve months preceding the day of election resided in the parish; or (d) he has either during the whole of the twelve months preceding the day of election, or since March 25 in the year preceding the year of election, resided in the parish or within three miles thereof (f).

The local government electors are the persons registered as local government electors in the register of electors in accordance with the Representation of the People Acts (see title ELECTIONS, Vol. V., p. 256). As regards the qualification by residence for the prescribed period within three miles of the parish, the distance should be measured in a straight line on a horizontal plane (g). [286]

Disqualification of Councillors.—The provisions of sect. 59 of the Act of 1933 (h) impose certain disqualifications upon persons for being elected or being members of a "local authority." These apply to parish councillors as the definition of "local authority" in the Act includes, besides county and district councils, the council of a rural parish (i). For these disqualifications, see title DISTRICT COUNCILLOR, Vol. V., p. 34. The acts and proceedings of any person elected to an office under the Act of 1933 and acting in that office, notwithstanding his disqualification or want of qualification, are as valid and effectual as if he had been qualified (j). [287]

Effect of Councillor's Interest in Contract with the Council.—The old law disqualifying for the office of councillor persons interested in a contract with the local authority has been fundamentally altered by sect. 76 of the Act of 1933 (k). It is there provided that if a member of a local authority (this expression includes a parish council) has any pecuniary interest, direct or indirect, in any contract or proposed contract or other matter, and is present at a meeting of the local authority at which the contract or other matter is the subject of consideration, he shall at the meeting, as soon as possible after its commencement, disclose the fact, and shall not take part in the consideration or discussion of, or vote on any question with respect to, the contract or other matter; but this does not apply to an interest in a contract or other matter which a member may have as a ratepayer or inhabitant of the area, or as an ordinary consumer of gas, electricity or water, or to an interest in any matter relating to the terms on which the right to participate in any service relating to the supply of goods is offered to the public. The section defines what is meant by having indirectly a pecuniary interest in a contract or other matter, and declares that in the case of married persons living together the interest of one spouse shall, if known to the other, be deemed to be also an interest of that other spouse. A general notice given in writing to the clerk of the authority as to any such interest as is mentioned in the section is a sufficient "disclosure" of such interest. The clerk

(f) L.G.A., 1933, s. 37.

(g) Interpretation Act, 1889, s. 34; 18 Halsbury's Statutes 1004.

(h) 26 Halsbury's Statutes 334.

(i) *Ibid.*, s. 305.

(j) *Ibid.*, s. 60.

(k) 26 Halsbury's Statutes 346.

of the authority must record in a book kept for the purpose particulars of any "disclosure" or "notice" given under the section; and the book is to be open at all reasonable hours to the inspection of any member of the local authority. Heavy penalties are prescribed for failure to comply with the section. These provisions are applied by sect. 95 of the Act, with necessary modifications, in respect of members of a committee or sub-committee of a local authority (including a parish council) and also as respects members of any joint committee appointed by agreement between local authorities. [288]

Acceptance of Office.—Every parish councillor, at the first meeting after his election (including a casual election), or if the council at the first meeting so permit, then at a later meeting fixed by the council, is required to make in the presence of a member of the council, and deliver to the council, a declaration of acceptance of office in the form prescribed by the Secretary of State (*l*) and if he fails so to do his office thereupon becomes vacant (*m*). As the declarations of acceptance in the case of parish councillors must be signed at the first meeting of the parish council after the election, unless at this meeting the council permitted any councillor who did not then attend to sign the declaration at a later meeting, a casual vacancy would be created by the failure of the absent councillor to sign the declaration at the first meeting. It is therefore important that the parish council should, at their first meeting, pass a resolution allowing those councillors who have not attended to sign the declaration at some later meeting specified in the resolution.

As a person elected to fill a casual vacancy in the parish council should sign a declaration of acceptance at the first meeting of the council *after* his election, he cannot take part as a parish councillor in the meeting at which the resolution electing him to fill the casual vacancy was adopted by the council. [289]

Retirement of Councillors.—The term of office of parish councillors (other than those elected to fill a casual vacancy) is three years, and they retire together on April 15 in the year 1940 and in every third year thereafter (*n*). It appears, in accordance with the usual rules for computing time, that the retirement from office of parish councillors on April 15 takes effect at the beginning of that day, and that the newly elected councillors enter into office simultaneously with the retirement of their predecessors. The newly elected parish councillors would, therefore, be entitled to attend any meeting of the parish council held on the day of retirement. [290]

Vacation of Seat by Resignation, Absence, etc.—A parish councillor may at any time resign his office by writing, signed by him and delivered to the chairman of the council. The resignation takes effect on receipt of the notice of resignation by the chairman (*o*). A member of a parish council also vacates office by failure to attend meetings of the parish council for six months consecutively, unless failure was due to some reason approved by the council. Attendance as a councillor

(*l*) Parish Councillors Election Rules, 1934; Sched. IV.; S.R. & O., 1934, No. 1318.

(*m*) L.G.A., 1933, s. 61 (4); 26 Halsbury's Statutes 337.

(*n*) *Ibid.*, s. 50 (2); *ibid.*, 330.

(*o*) *Ibid.*, s. 62.

at a meeting of any committee or sub-committee of the council, or at a meeting of any joint committee, joint board or other body to which any of the functions of the council have been delegated or transferred, is deemed to be attendance at a meeting of the parish council for the purposes of this provision (p). [291]

Casual Vacancies.—A casual vacancy among parish councillors is filled by the parish council. The council must forthwith be convened for the purpose (q). The person so elected holds office until the date upon which the person in whose place he is elected would regularly have retired (r). The candidates should be proposed and seconded at a meeting of the parish council, and a vote should be taken upon each candidate. A candidate to be successful must receive a majority of the votes of the members present and voting on the question of his election, or, if the votes for and against are equal, the casting vote of the chairman may decide the election (s). The mode of voting at meetings of the parish council on all questions, including the election of a councillor to fill a casual vacancy, is by show of hands, and on the requisition of any member of the council the voting is to be recorded so as to show whether each member present and voting gave his vote for or against the question (t). The effect of this provision is to preclude voting by ballot.

The provision of the Act of 1933 prohibiting the holding of an election to fill a casual vacancy which occurs within six months before the ordinary day of retirement apparently does not apply to a casual vacancy in a parish council (u). [292]

Omission to hold Election. Powers of County Council.—If a parish council become unable to act, whether from failure to elect or otherwise, the county council are empowered by sect. 55 of the Act of 1933 (a), to order a new election. The county council may also, by order, make such provision as seems expedient for authorising any person to act temporarily in the place of the parish council and of the chairman thereof. An order made by the county council under this section may modify the provisions of the Act of 1933, and the enactments applied by, or parish election rules made under, the Act. [293]

(p) L.G.A., 1933, s. 63 (1).

(r) *Ibid.*, s. 68.

(t) Sched. III., Part IV., r. 5.

(a) 26 Halsbury's Statutes 332.

(q) *Ibid.*, s. 67 (6).

(s) Sched. III., Part V., r. 1.

(u) *Ibid.*, s. 67 (6).

PARISH DOCUMENTS

CUSTODY UNDER L.G.As., 1894 AND 1933	PAGE — 128 —	PAGE PROVISION OF DEPOSITORY FOR PARISH DOCUMENTS — 120 INSPECTION OF DOCUMENTS — 129
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*See also titles : MINUTES ;
PARISH ACCOUNTS ;
RECORDS AND DOCUMENTS.*

Custody under L.G.As., 1894 and 1933.—Under sect. 281 of the L.G.A., 1933 (a), which replaced sect. 17 of the L.G.A., 1894 (b), the custody of registers of baptisms, marriages and burials, and of all other books and documents containing entries wholly or in part relating to the affairs of the church or to ecclesiastical charities, except documents directed by law to be kept with the public books, writings and papers of a parish, remains as provided by the existing law unaffected by the Act of 1933, that is to say, they are to remain in the custody of the rector, vicar or other officiating minister of each respective parish or chapelry. All other public books, writings and papers of a parish, and all documents directed by law to be kept therewith, shall either remain in their existing custody, or be deposited in such custody as may be directed : (a) in an urban parish, by the council of the borough or urban district ; (b) in a rural parish having a separate parish council, by the parish council ; (c) in a rural parish not having a parish council, by the parish meeting.

A copy of every inclosure award under the Inclosure Act, 1845 (c), and a copy of every tithe apportionment and map under the Tithe Act, 1886 (d), were directed by those statutes to be kept with the public books of the parish. [204]

Quarter sessions, on the application of persons interested, may order the copy of the tithe apportionment to be deposited with such persons or in such custody as the court thinks fit (e). When any person other than the person entitled has possession of the sealed copy of the apportionment, two justices, on the application of any person interested in the land or rent charge, upon fourteen days' notice, may order the copy to be deposited in other custody (f). The parish council may give directions as to the custody of the tithe apportionment, and where no order as to the custody of the tithe apportionment has been made by quarter sessions, an order of the county council under sect. 281 of the

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- (a) 26 Halsbury's Statutes 454.
 - (b) 10 Halsbury's Statutes 788.
 - (c) Inclosure Act, 1845, s. 146 ; 2 Halsbury's Statutes 506.
 - (d) Tithe Act, 1836, s. 64 ; 19 Halsbury's Statutes 468.
 - (e) Tithe Act, 1846, s. 17 ; *ibid.*, 532.
 - (f) Tithe Act, 1860, s. 28 ; *ibid.*, 544.

Act of 1933 (g) may be made, and may be enforced by an order of two justices (h).

The incumbent and churchwardens on the one part, and the parish council or the parish meeting as the case may be, on the other, have the right of reasonable access to all such books and documents as are referred to above; and any difference as to such custody or access shall be determined in a parish in a county borough, by the M. of H. and in any other parish by the county council (i).

As an instance of other documents directed by law to be kept with the parish books, may be mentioned a copy of every bye-law made by the R.D.C., which applies to that parish (k). [295]

Provision of Depository for Parish Documents.—Sect. 282 of the Act of 1933 provides that in rural parish having a separate parish council the parish council, or, if the parish council so request, the R.D.C., shall provide proper depositaries for all the public books, writings, papers and documents belonging to the parish for which no provision is otherwise made. In an urban parish, this duty is placed on the council of the borough or urban district. Under the same enactment, in a rural parish not having a separate parish council, the R.D.C. are required to provide, with the consent of the parish meeting, proper depositaries for all the public books, writings, papers and documents under the control of the parish meeting. [296]

Inspection of Documents.—Sect. 283 of the L.G.A., 1933 (l), provides that the minutes of proceedings of a local authority shall be open to the inspection of any local government elector for the area of the authority, on payment of a fee not exceeding one shilling, and that he may make a copy thereof or extract therefrom. The expression "local authority" includes a parish council. A local government elector may inspect and make a copy of an order for the payment of money by the local authority. The accounts of a local authority and of their treasurer are to be open to the inspection of any member of the authority and any such member may make a copy thereof or an extract therefrom. The abstract of the accounts of a local authority (m) and of their treasurer, and any report made by an auditor on those accounts, are to be open to the inspection of any local government elector for the area of the authority and he may make a copy thereof or extract therefrom and copies thereof must be delivered to him on payment of a reasonable sum for each copy. Documents thus directed to be open to inspection, must be so open at "all reasonable hours," and, except as otherwise expressly directed, without payment. The section above summarised applies to minutes of the proceedings, and to the accounts, of a parish meeting (n). [297]

(g) 26 Halsbury's Statutes 454.

(h) Title Act, 1860, s. 28; 19 Halsbury's Statutes 544; *Lewis v. Pool*, [1898] 1 Q. B. 164; 61 J. P. 776; 19 Digest 491, 3479. See also *Fox v. Pett*, [1918] 2 K. B. 196; 82 J. P. 252 (justices entitled to consider evidence as to place of deposit of apportionment).

(i) L.G.A., 1933, s. 281 (8).

(k) *Ibid.*, s. 250 (8).

(l) 26 Halsbury's Statutes 455.

(m) In the case of a parish council or parish meeting, or a joint committee appointed by two or more such bodies, the financial statement required by the Audit Regulations, 1934; S.R. & O., 1934, No. 1188, is to be treated as the abstract of accounts (Reg. No. 7).

(n) L.G.A., 1933, s. 283 (8).

PARISH IMPROVEMENT

	PAGE		PAGE
PUBLIC IMPROVEMENTS ACT, 1860	130	MODE OF ADOPTION AND EXECU-	
PROVISIONS OF THE ACT	— — 130	TION — — — —	— 130
		EXPENSES OF EXECUTION	— 130

The Public Improvements Act, 1860 (*a*), may be adopted for any parish in a rural district having, according to the last published census, a population of 500 or upwards. The Act cannot be adopted for a part only of a parish. The Act, however, is rarely adopted now that more modern powers are available. [298]

Provisions of the Act.—Where the Act is adopted the parish council may purchase or lease lands, and accept gifts and grants of land, for the purpose of forming any public walk, exercise or play ground, and may levy rates for maintaining them, and for the removal of any nuisance or obstruction to their free use, and for improving any open walk or footpath, or placing convenient seats or shelters from rain, and for other such purposes. [299]

Mode of Adoption and Execution.—The parish meeting have the exclusive power of adoption (*b*). The mode of adoption is similar to that of the Baths and Washhouses Act, 1846 (*c*). A two-thirds majority of the parish meeting and the approval of the Minister of Health are required for adoption (see title BATHS AND WASHHOUSES, Vol. II., p. 14), and the parish council then become the authority for the execution of the Act. [300]

Expenses of Execution.—Before any rate is imposed, a sum, in amount not less than at least one-half the estimated cost of the proposed improvement, must have been raised, given or collected by private subscription or donation (*d*). A majority of two-thirds of the local government electors present at the meeting must vote in favour of the rate. The amount in the pound of the rate to be levied should be fixed by the meeting in consenting to the levy of a rate. The parish council obtain the portion of the necessary funds which falls on rates by means of a precept addressed to the R.D.C., requiring the amount to be raised by means of an "additional item" of the general rate levied on the parish. The expenses under the Act are excluded from the limit imposed by sect. 193 (3) of the L.G.A., 1933 (*e*). [301]

(*a*) 13 Halsbury's Statutes 371.

(*b*) S. 2; 12 Halsbury's Statutes 371.

(*c*) The Baths and Washhouses Acts; 13 Halsbury's Statutes 519, have been repealed and replaced by the P.H.A., 1936, ss. 221 *et seq.*; 20 Halsbury's Statutes 471. These provisions as regards baths and washhouses are now in force without adoption by the parish meeting. The Public Improvements Act is, however, not thereby affected.

(*d*) Public Improvements Act, 1860, s. 6; 12 Halsbury's Statutes 372.

(*e*) 26 Halsbury's Statutes 411.

PARISH MEETING, CHAIRMAN OF

See CHAIRMAN OF PARISH MEETING.

PARISH MEETINGS

	PAGE	PAGE
CONSTITUTION - - - - -	181	MINUTES - - - - -
MODE OF CONVENING - - - - -	182	COMMITTEES - - - - -
PERSONS ENTITLED TO ATTEND - - - - -	182	POWERS AND DUTIES - - - - -
PLACE OF MEETING - - - - -	183	ACQUISITION OF LAND - - - - -
VOTING - - - - -	183	OFFICERS - - - - -
DEMAND FOR POLL - - - - -	184	EXPENSES - - - - -
POLL - - - - -	184	BORROWING - - - - -

See also titles :

CHAIRMAN OF PARISH MEETING ;
ELECTIONS ;
LOCAL GOVERNMENT ELECTORS ;
PARISH ;

PARISH ACCOUNTS ;
PARISH DOCUMENTS ;
PARISH PROPERTY.

This title deals with the constitution, powers, duties and procedure of parish meetings. These matters are governed by the L.G.A., 1933 (*a*), which replaced, with minor amendments, the corresponding provisions in the L.G.A., 1894 (*b*). [302]

Constitution.—It is provided by sect. 43 (1) of the Act of 1933 that for every rural parish there shall be a parish meeting. A rural parish is a parish within the district of an R.D.C. "Parish" means a place for which immediately before April 1, 1927, a separate poor rate was or could be made, or a separate overseer was or could be appointed (*c*). The parish meeting consists of the local government electors for the parish (*d*).

In every rural parish the parish meeting must assemble at least once a year, and twice if there be no parish council. The annual parish meeting must be held on some day between March 1 and April 1, both inclusive. Subject to this provision, a parish meeting shall be held on such days and at such times and places as may be fixed by the parish council, or if there is no parish council, by the chairman of the parish meeting. The proceedings may not commence earlier than six o'clock in the evening (*e*).

A parish meeting may be held for a portion of a parish where the parish is divided into wards for the election of parish councillors under sect. 52 of the Act of 1933, and also where it is proposed to adopt one

- (*a*) 26 Halsbury's Statutes 295.
- (*b*) 10 Halsbury's Statutes 773.
- (*c*) R. & V. Act, 1925, s. 68 (4); 14 Halsbury's Statutes 688.
- (*d*) L.G.A., 1933, s. 47 (1); 26 Halsbury's Statutes 328.
- (*e*) *Ibid.*, Sched. III., Part VI., r. 1.

of the adoptive Acts for part of a parish (f). The provisions of the Act of 1938 with respect to parish meetings, including those as to the convening of a parish meeting by local government electors, apply as if the ward or part of the parish were the whole parish (g). [303]

The quorum of a parish meeting is not prescribed by statute, but apparently a quorum might be fixed by a standing order of the parish council or parish meeting. The parish meeting are not a body corporate, and cannot hold land, but in a rural parish without a parish council, land may be held for the purposes of the parish by the "representative body" of the parish who are constituted a body corporate for this purpose (h).

Any act of a parish meeting for a parish may be signified by an instrument under the hands, or, if an instrument under seal is required, under the hands and seals, of the person presiding at the meeting and two other local government electors present at the meeting. Any instrument purporting to be executed in this manner, until the contrary is proved, is to be deemed to have been so executed (i).

Any document required to be sent to or served on a parish meeting shall be left with, or sent by post in a prepaid letter to, the chairman of the parish meeting (k). [304]

Mode of Convening.—A parish meeting may be convened (a) by the chairman of the council, or (b) by any two parish councillors, or (c) in a parish not having a parish council, by the chairman of the parish meeting, or any person representing the parish on the R.D.C., or (d) any six local government electors (l). Not less than seven clear days' public notice of a parish meeting must be given, and if the business relates to the establishment or dissolution of a parish council, or the grouping of the parish with another parish, or the adoption of any of the adoptive Acts, not less than fourteen days' notice must be given. The notice must specify the time and place of the intended meeting and the business to be transacted, and it must be signed by the convener or conveners of the meeting. Public notice of a parish meeting is required to be given (a) by affixing the notice to or near the principal door of each church or chapel in the parish, and (b) by posting the notice in some conspicuous place or places within the parish, and in such other manner (if any) as appears to the persons convening the meeting desirable for giving publicity to the notice (m). [305]

Persons Entitled to Attend.—The parish meeting consists of the local government electors assembled at a parish meeting (n). The local government electors are the persons registered in the local government register of electors for the parish in accordance with the Representation of the People Acts (o). See title LOCAL GOVERNMENT ELECTORS, Vol. VIII., p. 122. The right of a person to attend a parish meeting and to vote is, therefore, determined by the entry of his or her name

(f) L.G.A., 1894, s. 7 (4); 10 Halsbury's Statutes 779.

(g) L.G.A., 1938, s. 78 (b).

(h) *Ibid.*, s. 47. This body was set up by the Overseers Order, 1927 (S.R. & O., 1927, No. 55, Art. 7). See title PARISH PROPERTY.

(i) *Ibid.*, s. 47 (2).

(k) *Ibid.*, s. 286 (2).

(l) *Ibid.*, Sched. III., Part VI., r. 2 (1).

(m) *Ibid.*, Sched. III., Part VI., r. 2 (2), (3).

(n) *Ibid.*, s. 47 (1).

(o) *Ibid.*, s. 305. For Representation of the People Acts, see 7 Halsbury's Statutes 548 et seq.

upon the register. Special provision is made enabling any candidate for election as a parish councillor to attend and speak at a parish meeting for the election of parish councillors, but such candidate, unless he is a local government elector for the parish, is not entitled to vote (*p*). An elector with a qualification in more than one parish may be registered as an elector of each such parish, and may apparently attend and vote at the parish meeting of any parish for which he is registered as a local government elector. Where a parish meeting is held for a ward or other part of a parish the persons entitled to attend and vote at the meeting, or to vote at a poll consequent thereon, are the local government electors registered in respect of qualifications in that ward or part (*q*). [306]

Place of Meeting.—Parish meetings shall be held at such places as may be fixed by the parish council, or, if there is no parish council, by the chairman of the parish meeting (*r*). The parish council are especially empowered to acquire or provide and furnish buildings to be used for the purpose of transacting the business of the parish meeting (*s*). The provisions of sect. 128 of the Act of 1933, as to the use by the parish council of any suitable room in the school-house of any public elementary school or the use of any suitable room the expense of maintaining which is payable out of any rate, apply also to the use of any such room for parish meetings. See title PARISH COUNCIL, *ante*, p. 114.

There is no legal objection to holding a parish meeting upon private premises, but the meeting may not be held in premises licensed for the sale of intoxicating liquor, except where no other suitable room is available, either free of charge or at a reasonable cost (*t*). [307]

Voting.—Each local government elector may, at a parish meeting or at any poll consequent thereon, give one vote, and no more, on any question (*u*). But in the case of an election, one vote may be given for each of any number of candidates, not exceeding the number to be elected (*a*). The proceedings at a parish meeting held for the election of parish councillors are conducted in accordance with the regulations in the Parish Councillors Election Rules, 1934 (*b*), and are there minutely set out. See title ELECTIONS, Vol. V., p. 256. Every question to be decided by a parish meeting is, in the first instance, to be decided by the majority of those present and voting on the question (*c*), but where a special majority of the parish meeting is required by statute, such as is necessary, for example, upon the adoption of some of the adoptive Acts, the question must, of course, be decided by that majority. In case of an equality of votes the person presiding at the meeting shall have a second or a casting vote (*d*). The chairman must announce his decision as to the result of the voting, and that decision is final unless a poll is demanded (*e*). [308]

(*p*) L.G.A., 1933, Sched. III., Part VI., r. 4 (2); 26 Halsbury's Statutes 503.

(*q*) *Ibid.*, s. 78 (*a*).

(*r*) *Ibid.*, Sched. III., Part VI., r. 1 (2).

(*s*) *Ibid.*, s. 127.

(*t*) *Ibid.*, Sched. III., Part VI., r. 1 (4).

(*u*) *Ibid.*, r. 5 (1).

(*a*) *Ibid.*, s. 53 (2).

(*b*) S.R. & O., 1934, No. 1318.

(*c*) L.G.A., 1933, Sched. III., Part VI., r. 5 (2).

(*d*) *Ibid.*, r. 5 (3).

(*e*) *Ibid.*, r. 5 (2).

Demand for Poll.—A poll may be demanded before the conclusion of a parish meeting on any question arising thereat; provided that a poll shall not be taken unless either the person presiding at the meeting consents, or the poll is demanded by not less than five, or one-third of the local government electors present at the meeting, whichever is the less (*f*). [309]

Poll.—Any poll for the election of parish councillors consequent on a parish meeting must be taken by ballot (*g*). The poll must be conducted in accordance with the Parish Councillors Election Rules, 1934 (*h*). If the poll is taken on some other matter, the Parish Meetings (Polls) Rules, 1936, regulate the procedure (*i*). [310]

Minutes.—Minutes of the proceedings of the parish meeting or of a committee thereof, are to be drawn up and entered in a book provided for that purpose. They must be signed at the same, or the next ensuing, assembly of the parish meeting, or meeting of the committee, as the case may be, by the person presiding. Any minute so signed shall be received in evidence without further proof (*j*). The minute book is usually kept in the custody of the person acting as chairman of the parish meeting. [311]

Committees.—The parish meeting, in a rural parish not having a separate parish council, may appoint a committee from amongst the local government electors for the parish for any purpose which, in the opinion of the parish meeting, would be better regulated and managed by means of such a committee. All acts of the committee must be submitted to the parish meeting for approval (*k*). [312]

Powers and Duties.—In every rural parish the parish meeting have exclusively the power of adopting any of the adoptive Acts (*l*). Every parish meeting may discuss parish affairs and pass resolutions thereon (*m*).

In a rural parish with a parish council, the parish meeting elect the parish council, if a poll is not demanded (see *supra*), but apart from the power of adopting any of the adoptive Acts and the other functions which they may perform under those Acts, the powers of the parish meeting are practically limited to the exercise of a general control over the parish council in matters involving extraordinary expenditure.

The following is a general statement of the powers and duties of the parish meeting of a parish without a separate parish council:

(1) They may exercise the powers, etc., of the vestry, except so far as such powers may relate to the affairs of the church or to ecclesiastical charities (*n*).

(2) They may appoint trustees of a parochial charity in place of the overseers or churchwardens (*o*).

(*f*) L.G.A., 1933, Sched. III., Part VI., r. 5 (4).

(*g*) *Ibid.*, s. 54 (2); Sched. III., Part VI., r. 5 (5).

(*h*) S.R. & O., 1934, No. 1318.

(*i*) S.R. & O., 1936, No. 815.

(*j*) L.G.A., 1933, Sched. III., Part VI., r. 6 (1); 26 Halsbury's Statutes 503.

(*k*) *Ibid.*, s. 90.

(*l*) L.G.A., 1894, s. 7 (1); 10 Halsbury's Statutes 770. As to the adoptive Acts, see titles BATHS AND WASHHOUSES; BURIALS AND BURIAL GROUNDS; LIGHTING AND WATCHING ACT; LIBRARIES; PARISH IMPROVEMENT.

(*m*) L.G.A., 1933, Sched. III., Part VI., r. 4 (1).

(*n*) L.G.A., 1894, s. 19 (4); 10 Halsbury's Statutes 790.

(*o*) *Ibid.*, ss. 14 (2), 19 (5).

(3) The accounts of all parochial charities not being ecclesiastical charities must annually be laid before the parish meeting, and the names of the beneficiaries of dole charities must be published annually in such form as the parish meeting think fit (p).

(4) The draft of every scheme relating to a charity, not being an ecclesiastical charity, which affects the parish, must be communicated to the chairman of the parish meeting (q).

(5) Their consent is necessary to the stopping up or diversion of a public right of way within the parish or to a declaration that a highway in a rural parish is unnecessary for public use, and not repairable at the public expense (r).

(6) They may complain to the county council of a default on the part of the R.D.C. as regards works of sewerage or water supply, or the enforcement of the P.H.As. in the parish (s).

(7) They may give directions to the "representative body" of the parish by whom land, including parish property, is held on behalf of the parish (t).

(8) They may execute any works (including works of maintenance or improvement) in relation to any parish property, not being property relating to affairs of the church or held for an ecclesiastical charity (u).

(9) The parish meeting are the "minor local authority" for the purposes of the Education Act, 1921, and as such may appoint two representatives on the board of managers of a provided, and one representative on the board of a non-provided, public elementary school which serves the parish (a).

On the application of the parish meeting the county council may (subject to the provisions of any grouping order) confer, by order, on the parish meeting any functions of a parish council (b). [313]

Acquisition of Land.—The parish meeting of a parish with a separate parish council are not a corporate body, and do not hold land. If there is no parish council for the parish, land may be held for the purposes of the parish by the "representative body" of the parish (c). See title PARISH PROPERTY, *post*, p. 187. [314]

Officers.—The parish meeting of a rural parish have no power to appoint and pay a clerk to the parish meeting or to appoint a treasurer unless the powers of a parish council as regards these matters have been conferred on them by an order of the county council. [315]

Expenses.—The sums required to be raised to meet the expenses of a parish meeting, including the expenses of a poll consequent on a parish meeting, are chargeable separately on the parish. In a parish not having a parish council, the sums required to be raised in any financial year to meet the expenses of the parish meeting when added to the expenses of any authority under any of the adoptive Acts may not exceed an amount equal to a rate of eightpence in the pound, or

(p) L.G.A., 1894, s. 14 (6).

(q) *Ibid.*, s. 14 (5).

(r) *Ibid.*, ss. 18 (1), 19 (8).

(s) *Ibid.*, ss. 16 (1), 19 (8).

(t) L.G.A., 1933, s. 47 (4); 26 Halsbury's Statutes 320.

(u) L.G.A., 1929, s. 115 (6); 10 Halsbury's Statutes 956.

(a) Ss. 30, 170; 7 Halsbury's Statutes 146, 212.

(b) L.G.A., 1933, s. 273; 26 Halsbury's Statutes 451.

(c) *Ibid.*, s. 47 (2).

such higher rate as the Minister of Health may by order as respects any particular parish allow. For the purpose of obtaining sums necessary to meet the expenses of a parish meeting the chairman of the parish meeting of a parish not having a parish council shall issue precepts to the R.D.C. (d). The financial year is the period ending March 31 (e). In rural parishes not having a separate parish council, the chairman of the parish meeting must defray, in addition to the above-mentioned expenses, the expenditure incurred in the execution of the powers vested in the parish meeting by the Acts of 1894 and 1933 or by any order of the county council under sect. 273 of the Act of 1933. These expenses are charged upon the general rate, and the chairman obtains the necessary funds by means of precepts served on the R.D.C., who, in turn, must levy the amount required on the parish as an "additional" item of the general rate (f). [316]

Borrowing.—A parish meeting has no power to borrow money unless the county council have conferred on them the powers of a parish council as to raising loans, by an order under sect. 273 of the Act of 1933 (g). [317]

(d) L.G.A., 1933, s. 103 (6).

(e) *Ibid.*, s. 305.

(f) R. & V. Act, 1925, s. 2 (3); 14 Halsbury's Statutes 620.

(g) 26 Halsbury's Statutes 451.

PARISH PROPERTY

	PAGE		PAGE
CLASSES OF PARISH PROPERTY — 130		PROVISION OF BUILDINGS FOR	
EFFECT OF THE ACTS OF 1894		OFFICES AND PARISH AND PUBLIC	
AND 1933, AND OF LATER		MEETINGS — — — — — 138	
ACTS — — — — — 137		ACCEPTANCE OF GIFTS OF PRO-	
STATUTORY DEFINITION OF PARISH		PERTY — — — — — 139	
PROPERTY — — — — — 138		SALE OR EXCHANGE OF LAND — — 139	
ACQUISITION OF LAND — — — — — 138		POWER TO LET LAND — — — — — 139	

*See also titles : ALLOTMENTS ;
CHARITIES ;
COMPULSORY PURCHASE OF LAND.*

Classes of Parish Property.—Parish property usually comprises the following classes :

(1) Old parish workhouses or cottages provided by or devised to the churchwardens and overseers for the accommodation of the poor before the general formation of boards of guardians under the Poor Law Amendment Act, 1834 (a), and lands acquired by the churchwardens and overseers for the employment of the poor.

(a) 4 & 5 Will. 4, c. 76; s. 7.

(2) Vestry rooms provided under the Vestries Act, 1850 (*b*), and parochial offices provided under the Parochial Offices Act, 1861 (*c*).

(3) Allotments vested in the overseers by an inclosure award to be used as village greens, recreation grounds, field gardens, or otherwise for the benefit of the inhabitants.

(4) Consols or other stock, generally purchased with the proceeds of a sale of parish property.

(5) Village pounds and similar property, sometimes possessing a sentimental interest but seldom much money value, the origin of its treatment as parish property being frequently obscure. [318]

Effect of the Acts of 1894 and 1933, and of Later Acts.—In a rural parish with a parish council, the legal interest in all property vested either in the overseers or in the churchwardens and overseers of the parish, other than property connected with the affairs of the church, or held for an ecclesiastical charity, was vested in the parish council by sect. 5 (2) (*c*) of the Act of 1894 (*d*). The net income should therefore be applied in accordance with the trusts upon which the property was held, and if it is applicable in aid of the poor rates, should be paid over to the R.D.C. [319]

In a rural parish without a parish council, sect. 19 (6) of the Act of 1894 (*e*) constituted the chairman of the parish meeting and the overseers of the parish a body corporate by the name of the chairman and overseers of the parish, with perpetual succession, and with power to hold land for the purposes of the parish without licence in mortmain. The chairman and the overseers were to act in manner directed by the parish meeting, and any act of the body corporate was to be executed under the hands, or, if an instrument under seal was required, under the hands and seals of the chairman and overseers.

On the abolition of the overseers by the R. & V. Act, 1925, this body corporate was superseded by the "representative body" of the parish, as thereafter set up by the Overseers Order, 1927 (*f*), and sect. 47 of the Act of 1933. Accordingly the body corporate is now the chairman of the parish meeting and the councillor or councillors representing the parish on the R.D.C. with the addition of the name of the parish. They have perpetual succession and power to hold land for the purposes of the parish without licence in mortmain. If the parish is represented on the R.D.C. by one councillor only, and that councillor is also chairman of the parish meeting, the R.D.C. must appoint a local government elector for the parish to be a member of the representative body, and the person so appointed, unless he resigns or ceases to be qualified or becomes disqualified, holds office until the expiration of a term of four years, or until the offices of rural district councillor representing the parish and chairman of the parish meeting cease to be held by the same person (*g*). The representative body must act in manner directed by the parish meeting, and any act of that body may be signified by an instrument under the hands, or, if an instrument under seal is required, under the hands and seals of the members thereof (*h*). By virtue of

(*b*) 10 Halsbury's Statutes 545.

(*c*) *Ibid.*, 553.

(*d*) *Ibid.*, 777.

(*e*) *Ibid.*, 790.

(*f*) Art. 7 (S.R. & O., 1927, No. 55).

(*g*) L.G.A., 1933, s. 47 (3); 26 Halsbury's Statutes 329.

(*h*) *Ibid.*, s. 47 (4).

the Overseers Order, 1927, and sect. 115 of the L.G.A., 1929 (*i*), parish property in urban areas is now vested in the borough or U.D.C. [320]

Statutory Definition of Parish Property.—The meaning of “parish property” was often doubtful under the L.G.A., 1894, but is now clarified by the comprehensive definition of the expression in sect. 305 of the Act of 1933 (*k*) which provides that “parish property” means : (a) property, the rents and profits of which are applicable to the general benefit of one or more parishes, or the ratepayers or inhabitants thereof, but it does not include property given by way of charitable donation or otherwise for the poor persons of any parish, if the income is not applicable to the general benefit of the ratepayers or other persons as aforesaid ; (b) land allotted to, or otherwise acquired by, a parish for the purpose of the supply of materials for the repair of the public roads in the parish and also for the repair of private roads therein, or for some other purpose, public or private, where the materials in the land are exhausted, or are not suitable or required, and the land is not available, for that other purpose. [321]

Acquisition of Land.—A parish council may, for the purpose of any of their functions under the Act of 1933, or any other public general Act, by agreement acquire, by way of purchase, lease or exchange, any land, whether situate within or without the parish (*l*). The expression “land” includes any interest in land, and any easements or right in, to or over land (*m*). Reference may also be made to the specific power given to parish councils by sect. 8 (1) (b) of the Act of 1894 (*n*) of providing or acquiring land for a recreation ground and for public walks ; and to the wide power given by sect. 69 of the P.H.A., 1925 (*o*), under which the parish council may acquire by purchase, gift or lease and may lay out, equip and maintain, lands (not forming part of any common or village green) for cricket, football or other games, and may either manage these lands themselves and charge for the use thereof or admission thereto, or may let the lands or any portion thereof to any club or person for use for any of those purposes. The parish council may contribute towards the expenses incurred under this provision by any other council or local authority. As to the compulsory purchase of land by the county council on behalf of a parish council, see title COMPULSORY PURCHASE OF LAND, Vol. III., p. 404. [322]

Provision of Buildings for Offices and Parish and Public Meetings.—A parish council may acquire or provide and furnish buildings to be used for the business of the council or the parish meetings, or any other parish business, and for public meetings and assemblies, or may combine with any other parish council for the purpose of acquiring or providing and furnishing any such buildings, or may contribute towards the expenses incurred by any other parish council, or by any other person, in acquiring or providing and furnishing a building for any of these purposes (*p*). [323]

(*i*) 10 Halsbury's Statutes 956.

(*k*) 26 Halsbury's Statutes 467. See similar definition in L.G.A., 1929, s. 115 (*o*) ; 10 Halsbury's Statutes 956.

(*l*) L.G.A., 1933, s. 107 ; 26 Halsbury's Statutes 398.

(*m*) *Ibid.*, s. 305.

(*n*) 10 Halsbury's Statutes 780.

(*o*) 13 Halsbury's Statutes 1146.

(*p*) L.G.A., 1933, s. 127 ; 26 Halsbury's Statutes 873.

Acceptance of Gifts of Property.—The parish council are empowered by sect. 268 of the Act (*q*) to accept, hold and administer any gift of property, real or personal, for any local public purpose, or for the benefit of the inhabitants of the parish or of some part thereof, and may execute any works, including works of maintenance or improvement, incidental to or consequential on the exercise of this power. Where the purposes of the gift are purposes for which the council are empowered to expend money raised from a rate, they may, subject to any condition attaching to the exercise of that power, defray expenditure incurred in the exercise of the powers conferred by this provision out of money so raised. These powers do not authorise the acceptance by the council of property which, when accepted, would be held in trust for an ecclesiastical or an eleemosynary charity. [324]

Sale or Exchange of Land.—The parish council or, in a rural parish not having a separate parish council, the representative body of the parish, may, with the consent of the parish meeting (*a*) sell any land they possess which is not required for the purpose for which it was acquired or is being used, or (*b*) exchange any land they possess for other land, either with or without paying or receiving any money for equality of exchange. But no land held for charitable purposes may be sold or exchanged without such consent or approval as is required under the Charitable Trusts Act, 1853 to 1925 (*r*), as amended by the Board of Education Act, 1899 (*s*), and no other land may be sold or exchanged without the consent of the Minister of Health (*t*). [325]

Power to Let Land.—The parish council or, in a rural parish not having a separate parish council, the representative body of the parish with the consent of the parish meeting, may let any land vested in them which is held for charitable purposes, subject to the same consent or approval as is required for the sale or exchange of land, and they may let any other land vested in them with the consent of the Minister of Health. No consent or approval, however, is required where the term for which the land is let does not exceed one year and, where land is held for charitable purposes, no consent or approval is required if the letting is for allotments under the Allotments Acts, 1908 to 1931 (*u*). [326]

(*q*) *Ibid.*, 440.

(*r*) 2 Halsbury's Statutes 320, 405.

(*s*) 7 Halsbury's Statutes 124.

(*t*) L.G.A., 1933, s. 170 (1); 26 Halsbury's Statutes 400.

(*u*) *Ibid.*, s. 169.

PARKING PLACES

DEFINITION	PAGE	PAGE
OUTSIDE THE LONDON TRAFFIC AREA	140	141
AREA	140	

See also title : ROAD TRAFFIC.

Definition.—A parking place is a place where vehicles, or vehicles of any particular class or description, may wait (*a*). [327]

Outside the London Traffic Area.—Outside the London traffic area these places may be provided by local authorities where they think that the provision is necessary for relieving or preventing congestion of traffic. Within that area they are prescribed by the Minister of Transport (*b*). A sign to indicate that a parking place exists was prescribed by the Minister of Transport in 1933 (*c*).

To provide such a place the authority may either acquire land, or utilise land which may be lawfully appropriated (*d*) for the purpose, or authorise the use as such a place of any part of a street within their area. But they may not do this so as to impede access to premises adjoining a street or obstruct a street or cause a nuisance. Their order, if it relates to a street, must have the consent of any person or authority (other than themselves) who or which may be responsible for its maintenance (*e*). Notice of their proposal to act in this way must be published in a local newspaper, and posted on the land to which the proposal relates for not less than fourteen days. This notice must give a date (not less than twenty-eight days from the date of posting) within which objectors to the proposal may give notice in writing of their objections. Anybody may object (*f*) and his objection must be considered and the objector informed if his protest is overruled. If it is so, he has an appeal to petty sessions.

If a parking place is provided elsewhere than in a street the authority may "adapt" it and may appoint superintendents, with or without remuneration. The P.H.A., 1925, empowered them to make regulations (now superseded by bye-laws; *vide infra*) for the use of a parking place by any or any class of vehicles, and if not in a street to charge for its use.

Subject to what is hereafter said, no vehicles in such a place may ply for hire. Orders made in this way may be revoked by the same procedure (*g*). [328]

(*a*) P.H.A., 1925, s. 68 (9); 13 Halsbury's Statutes 1140.

(*b*) See "In the London Traffic Area," *post*, p. 141.

(*c*) P.R. & O. (Traffic Signs Prescribed Size) of December 22, 1933 (Sched. V).

(*d*) As to this, see *A.G. v. Sunderland Corp.*, [1930] 1 Ch. 168; Digest Supp.

(*e*) P.H.A., 1925, s. 68 (1); 13 Halsbury's Statutes 1145.

(*f*) *Severnaks U.D.C. v. Tympan*, [1929] 2 K. B. 440; Digest Supp.

(*g*) P.H.A., 1925, s. 68 (8); 13 Halsbury's Statutes 1146.

When a local authority (*h*) have provided a parking place and declare that public service vehicles may use it, they may under the Road Traffic Act, 1930, take further steps. The first step is an order to appoint the parking place as a "station" for these vehicles; the second to say that they may take up passengers whilst there notwithstanding the provision to the contrary in the 1925 Act. When they have appointed they may, with the Minister of Transport's consent, do all such things as are necessary to adapt the place as a station, including the provision of waiting rooms, etc., may make charges for, and let, the parking space and make bye-laws for its use. Notice of an intention to make this "appointing" order must be published, and a month is given for objections. It seems that the consent of the Minister is necessary, first to the order as a whole and secondly to the detailed process of adaptation (*i*). And though no adaptation, but only provision, has taken place, a local authority may charge public service vehicles which use the station (*k*). An order of this kind stands for three years and may be renewed, but may at any time be revoked by an order made with the same formalities as those which it revokes (*l*). [329]

By the Restriction of Ribbon Development Act, 1935, the power of local authorities with regard to parking places is enlarged (*m*). They may provide and maintain buildings and underground places to serve as such and provide cloak rooms and so forth in connection therewith. Underground parking places, though beneath a street, are declared not to be a street, so that a local authority may charge for their use (*n*). They may acquire, utilise and adapt land (or any right in, over or under land) so as to provide means of ingress to and egress from these places; and for these purposes may adapt land which is part of a street with the consent of the person or authority responsible for its maintenance (*o*). They may let any parking place which they provide if it is not part of a street, and may make bye-laws for the governance of parking places, whether in a street or not. These bye-laws require confirmation by the Minister of Health (*p*), who has issued model bye-laws (with a preface which embodies a model form of order fixing parking places, and a model advertisement) for the assistance of local authorities. [330]

In the London Traffic Area.—Sect. 10 (1) of the London Traffic Act, 1924 (*q*), as amended by sect. 63 of the London Passenger Transport Act, 1933 (*r*), and para. 15 of Sched. III. to the Act of 1924, empowers the Minister of Transport to make regulations with respect to parking places in streets in the London traffic area. A number of regulations have been issued, and a provisional Consolidation Order was issued

(*h*) For the definition of "local authority," here see the Road Traffic Act, 1930, s. 90 (9); 23 Halsbury's Statutes 671.

(*i*) Road Traffic Act, 1930, s. 90 (3) (a) and (5).

(*k*) Road Traffic Act, 1934, s. 29 (2); 27 Halsbury's Statutes 556. See the note in Mahaffy and Dodson (1936), p. 328.

(*l*) Road Traffic Act, 1930, s. 90 (7); 23 Halsbury's Statutes 671.

(*m*) S. 16; 28 Halsbury's Statutes 275.

(*n*) P.H.A., 1925, s. 68 (6); 13 Halsbury's Statutes 1146, did not allow this.

(*o*) Restriction of Ribbon Development Act, 1935, s. 16 (2); 28 Halsbury's Statutes 275. Such person or authority may, of course, be somebody different from themselves.

(*p*) *Ibid.*, s. 16 (4).

(*q*) 19 Halsbury's Statutes 183.

(*r*) 20 Halsbury's Statutes 804.

dated March 29, 1934. This was replaced in the following year by the London Traffic (Parking Places) Consolidated Regulations, 1935 (*s*), the effect of which was to authorise A and B parking places. At the first private cars and carriages and hackney cabs may park; at the second all vehicles other than locomotives (*b*).

The P.H.A., 1925, as amended, does not apply to London, but the powers of sect. 68 (*a*) of that Act have, by order made by the Minister of Transport under the Restriction of Ribbon Development Act, 1935 (*a*), been conferred on London local authorities (*b*). [331]

(*s*) S.R. & O., 1935, No. 1311, p. 940.

(*t*) See the Order in Malmsay and Dodson (1936), p. 557 and p. 559.

(*u*) 18 Halsbury's Statutes 1145.

(*a*) S. 20; 28 Halsbury's Statutes 278.

(*b*) Restriction of Ribbon Development (Power to Provide Parking Places) London Order, 1936 (S.R. & O., 1936, No. 1088).

PARKS

See OPEN SPACES; PUBLIC PARKS.

PARLIAMENTARY AGENTS

The main functions of parliamentary agents are to assist their clients in the promotion of and opposition to legislation, including provisional orders, special orders and other statutory orders. Although they are mainly concerned with private Bill legislation, they are also frequently consulted on public Bills. It is the duty of a parliamentary agent to advise his client as to the powers given or likely to be given by Parliament, or in the case of an order by a Government department, as to the steps to be taken to secure or to oppose the granting of such powers, as to the selection of counsel and witnesses and as to the preparation of the case to be laid before the tribunal. He is also responsible for seeing that the standing orders are complied with, or in suitable cases that steps are taken to secure dispensation therewith. The parliamentary agent prepares the drafts of most of the documents required, such as the Bill, notices and advertisements, petitions and clauses, and generally takes an active part in the negotiations between promoters and opponents. He is personally responsible for the due observance of the rules, orders and practice of Parliament for the regulation and management of private business. [332]

Before 1836 the private business of Parliament was mainly conducted by officers of the two Houses, but in that year the House of Commons passed a resolution requiring their officers to elect whether they would confine themselves to their public duties or would retire with a view to practising outside the House as parliamentary agents.

The report of a Joint Select Committee of the two Houses of Parliament appointed in 1876 contains the following :

"The profession of a parliamentary agent requires an accurate acquaintance with particular branches of the law, and especially with the practice of Parliament; also a sound knowledge of parliamentary drafting. It is at least as distinct from those of a barrister and a solicitor as those two professions are from each other." [333]

Parliamentary agents have the sole right of audience before the Examiners on Private Bills, the Standing Orders Committee of each House of Parliament, the Unopposed Bills Committee of each House, and the Special Orders Committee of the House of Lords. They have an equal right of audience with counsel before the Select Committees or Joint Select Committees dealing with opposed private Bills.

Most parliamentary agents are solicitors, some are or were barristers, and a few have no legal qualification. No person can act as a parliamentary agent until he has signed the prescribed declaration and until his name is entered in the register of parliamentary agents, and no person can be registered until he is actually employed in promoting or opposing some private Bill or petition pending in Parliament. [334]

The charges of a parliamentary agent are regulated and subject to taxation under the House of Commons Costs Taxation Act, 1847 (a), the House of Lords Costs Taxation Act, 1849 (b), and the House of Commons Costs Taxation Act, 1879 (c).

A parliamentary agent is regarded as an officer of Parliament for the purposes of private business just as a solicitor is an officer of the Supreme Court (d).

By the rules relating to parliamentary agents they are prohibited from dividing with or paying to any client or any solicitor, clerk, officer or servant of a client any part of their costs, charges and expenses and from giving any commission or gratuity to any person in respect of their employment as parliamentary agents.

The Society of Parliamentary Agents was established nearly 100 years ago and includes in its membership nearly all parliamentary agents in active practice. [335]

(a) 12 Halsbury's Statutes 481.

(b) *Ibid.*, 485.

(c) *Ibid.*, 507.

(d) Clifford's History of Private Bill Legislation, Vol. II., p. 870.

PARLIAMENTARY BILLS

See BILLS, PARLIAMENTARY AND PRIVATE.

PAROCHIAL CHARITIES

See CHARITIES.

PAROCHIAL ELECTORS

See LOCAL GOVERNMENT ELECTORS.

PAROCHIAL TRUSTS

See CHARITIES.

PARTY WALLS

See BUILDING BYE-LAWS.

PASSAGE BROKERS

See EMIGRANT RUNNERS AND PASSAGE BROKERS.

PASSAGES

See REPAIR OF ROADS.

PASTURE GROUNDS

See DERATING.

PAUPER LUNATICS

See PERSONS OF UNSOUND MIND.

PAVING AND SEWERING OF PRIVATE STREETS

See PRIVATE STREETS.

PAWBROKERS

	PAGE		PAGE		
DEFINITION	—	145	Grounds for Refusal	—	147
PAWBROKER'S LICENCE	—	146	Forgery	—	147
PAWBROKER'S CERTIFICATES	—	146	APPEAL	—	147
By Whom Granted	—	146	LONDON	—	147
Notice of Application	—	146			

For the general law relating to Pawnbrokers, see 25 Halsbury (2nd ed.), title PAWNS AND PLEDGES.

Definition.—A pawnbroker is one whose business is to lend money, usually in small sums, upon pawn or pledge (*a*), and includes, for statutory purposes, every person who carries on the business of taking goods or chattels in pawn (*b*).

This title will deal with the powers and functions of a local authority

(*a*) Bouvier's Law Dictionary, Vol. II., p. 634.

(*b*) Pawnbrokers Act, 1872, s. 5; 12 Halsbury's Statutes 690. Pawn or pledge is a bailment of personal property as security for some debt or engagement. Storey is a bailments, 9th ed., s. 286. The different definitions are collected in *Donald v. Suckling* (1866), L. R. 1 Q. B. 585, 594; 37 Digest 9, 43.

as to pawnbrokers. These are derived from the Pawnbrokers Act, 1872 (c), and the meaning of the expression "carrying on the business," etc., is explained in sect. 6 of that Act (d). A person, however, is not to be deemed a pawnbroker by reason only of his entering into contracts of pawn where the sum advanced exceeds £10 (e). [336]

Pawnbroker's Licence.—A pawnbroker is required to take out an annual excise licence expiring July 31 (f) in respect of each shop in which the business of a pawnbroker is carried on (g). No licence will be granted except on the production of, and in pursuance of, the authority of a certificate which the intending pawnbroker must obtain, unless he is a pawnbroker or the executor, administrator, assign or successor of a pawnbroker already licensed at the commencement of that Act (h). A pawnbroker in business before that date, his executors, administrators, assigns or successors are entitled to the benefit of the licence for any place of business without a certificate and are not limited to the particular business the pawnbroker was carrying on but may open other shops (i). But a successor who was himself not licensed at the commencement of the Act, of a pawnbroker who was so licensed, has no right to open a new business without the required certificate (k). [337]

Pawnbroker's Certificates. By whom Granted.—Pawnbroker's certificates are granted, outside London, in places within the jurisdiction of a stipendiary magistrate, by the stipendiary magistrate, in county boroughs by the town council, and in county districts by the district council, which includes every urban or rural district, whether borough or not, of the district in which the application is made (l). [338]

Notice of Application.—When a person is applying for the first time for a certificate he must twenty-one days at least before the application give notice by registered letter of his intention to the rating authority of the parish in which he intends to carry on business, and to the superintendent (m) of police of the district. The applicant must state his name and address in the form of application (n). Within twenty-eight days before the application he must also cause like notice to be affixed and maintained on two consecutive Sundays on the door of the church or chapel of the parish or place, and if there be none, on some

(c) 12 Halsbury's Statutes 689—711.

(d) *Ibid.*, 690.

(e) *Ibid.*, s. 10.

(f) The application which is made to the Commissioners of Inland Revenue need not be in writing. An excise duty of £7 10s. is chargeable. Penalty for acting without a licence, £50, recoverable as an excise penalty (*ibid.*, s. 37).

(g) *Ibid.*, s. 37. Pawnbrokers carrying on business in partnership require one licence only. See s. 7, Excise Licences Act, 1825; 16 Halsbury Statutes 79.

(h) *i.e.* December 31, 1872; *ibid.*, s. 39.

(i) *R. v. Inland Revenue Comrs., Ohlson's Case, Garland's Case*, [1801] 1 Q. B. 485; 37 Digest 22, 175.

(k) *R. v. Inland Revenue Comms., Ex parte Silvester*, [1907] 1 K. B. 108; 37 Digest 22, 176, where *Ohlson's* and *Garland's* Cases were discussed.

(l) Pawnbrokers Act, 1872, s. 40; 12 Halsbury's Statutes 701; L.G.A., 1894, ss. 27, 32; 10 Halsbury's Statutes 707, 798.

(m) See *R. v. Birley* (1891), 55 J. P. 88; 30 Digest 18, 53. (Notice to be given to head of police in the district though not styled "superintendent.")

(n) Pawnbrokers Act, 1872, s. 42 (1); 12 Halsbury's Statutes 702; The Overseers Order, 1927 (S.R. & O., 1927, No. 55, Art. 5 (3)); for Form of Notice of Application, see 12 Ency. Forms 5.

public or conspicuous place (*o*). The certificate remains in force for a year from its date. It must be in the prescribed form (*p*). [339]

Grounds for Refusal.—The application cannot be refused except on the ground that the applicant has failed to produce evidence of good character, or that his shop or any adjacent house or place owned or occupied by him is frequented by thieves or persons of bad character (*q*), or that he has not given the requisite notices. [340]

Forgery.—The forgery of a certificate or tender of a certificate knowing it to be forged is punishable by fine or imprisonment. A licence granted in pursuance of a forged certificate is void, and a person using a certificate knowing it to be forged is disqualified from obtaining a pawnbroker's licence thereafter (*r*). [341]

Appeal.—An appeal lies to quarter sessions against a refusal of a certificate for a licence or against a conviction under the Act (*s* [342]).

London.—The Metropolitan Police Act, 1839, sect. 50 (*t*), and the City of London Police Act, 1839, sect. 34 (*u*), impose a penalty not exceeding £5 on pawnbrokers receiving pledges from persons under sixteen. The provision of sect. 50 was expressly saved by the Children Act, 1908, sect. 117 (*a*), and does not appear to be expressly affected by sect. 8 of the Children and Young Persons Act, 1933 (*b*). The Metropolitan Police Act, 1839, sect. 66, and the City of London Police Act, 1839, sect. 48, contain provisions for detention by pawnbrokers in case of suspected offenders. The Metropolitan Police Courts Act, 1839, sect. 28 (*c*), enables a magistrate to order restoration of property unlawfully pawned. In the metropolitan police district, certificates under the Pawnbrokers Act, 1872, sect. 40 (*d*), are granted by stipendiary magistrates. [343]

(*o*) Pawnbrokers Act, 1872, s. 42 (2).

(*p*) *Ibid.*, s. 41, Sched. VI., and see also 12 Ency. Forms 6.

(*q*) See *Re O'Brien, R. v. Lancashire JJ.* (1891), 64 L. T. 562; 30 Digest 18, 98.

(*r*) Pawnbrokers Act, 1872, s. 44; 12 Halsbury's Statutes 702.

(*s*) *Ibid.*, s. 52 (which sets out the procedure on appeal). See title APPEALS TO THE COURTS. On an appeal to quarter sessions against the refusal by a district council to grant a certificate there is no jurisdiction to order a successful appellant's costs to be paid by the council where the council have not taken any part in the appeal (*R. v. Northumberland JJ., Ex parte Amble U.D.C.* (1907), 96 L. T. 700; 37 Digest 23, 177).

(*t*) 12 Halsbury's Statutes 680.

(*u*) 2 & 3 Vict. c. xciv.

(*a*) 4 Halsbury's Statutes 767.

(*b*) 26 Halsbury's Statutes 177.

(*c*) 4 Halsbury's Statutes 473.

(*d*) 12 Halsbury's Statutes 701.

PEDLARS

	PAGE		PAGE
DEFINITION -	148	LONDON -	-
CERTIFICATION BY THE LOCAL	-		-
AUTHORITY -	149		149

See also title : MARKETS AND FAIRS as to Hawkers.

Definition.—The law in regard to pedlars is set out in the Pedlars Act, 1871, as amended by the Pedlars Act, 1881 (*a*). By sect. 3 of the Act of 1871 the term "pedlar" means any hawker, pedlar, petty chapman, tinker, caster of metals, mender of chairs, or other person who, without any horse or other beast bearing or drawing burden, travels and trades on foot, and goes from town to town or to other men's houses, carrying to sell or exposing for sale any goods, wares or merchandise, or procuring orders for goods, wares or merchandise immediately to be delivered, or selling or offering for sale his skill in handicraft. Although a "hawker" is a pedlar in the foregoing definition, a distinction between a hawker and a pedlar is made in the Hawkers Act, 1888 (*b*), in that a hawker travels with a horse or other beast of burden. A person who travels by any means of locomotion to a place where he does not usually reside or carry on business, and there sells or exposes for sale any goods in or at any house, shop, room, booth, stall or other place hired or used by him for that purpose is by the last cited section a hawker, and therefore also a pedlar within the definition in sect. 3 of the Act of 1871. [344]

In *Druce v. Gabb* (*c*) it was held that "sell" included "barter," and in *Gregg v. Smith* (*d*) that selling for charitable purposes did not come under the definition. By sect. 6 of the Pedlars Act, 1871 (*e*), the term "licensed hawkers" used in sect. 13 of the Markets and Fairs Clauses Act, 1847 (*f*), where any person other than a licensed hawker is liable to a penalty for selling in the area outside the market except in his own house or shop, any article on which tolls are levied in a market, is to include pedlars. Where a pedlar, with a pedlar's certificate, used a horse and cart in such a case, he was in *Howard v. Lupton* (*g*), held not to be liable to a penalty under this section but in *Woolwich Local Board of Health v. Gardiner* (*h*) he was held to be liable.

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- (*a*) 11 Halsbury's Statutes 471—478, 479.
 - (*b*) S. 2 ; 16 Halsbury's Statutes 579.
 - (*c*) (1858), 31 L. T. O. S. 98 ; 33 Digest 565, 566.
 - (*d*) (1878), L. R. 8 Q. B. 302 ; 33 Digest 568, 535.
 - (*e*) 11 Halsbury's Statutes 473.
 - (*f*) *Ibid.*, 457.
 - (*g*) (1875), L. R. 10 Q. B. 598 ; 33 Digest 568, 537.
 - (*h*) [1895] 2 Q. B. 497 ; 33 Digest 568, 538.

By sect. 23 of the Pedlars Act, 1871 (*i*), the certificate as described below that is necessary for a pedlar need not be obtained by (i.) commercial travellers or other persons seeking orders for goods, wares or merchandise to or from persons who are dealers in them and who buy to sell again, or selling or seeking orders for books as agents authorised in writing by the publisher of the books ; or (ii.) sellers of vegetables, fish, fruit or victuals ; or (iii.) persons selling or exposing for sale goods, wares or merchandise in any public mart, market or fair legally established. By *R. v. Hodgkinson* (*k*) it was decided that victuals included " everything that constitutes an ingredient in the food of man and all articles which, mixed with others, constitute food." [345]

Certification by the Local Authority.—It is laid down by sect. 4 of the Act of 1871 (*l*) that a penalty is to be incurred by a pedlar as defined above who acts without a certificate, and by sect. 2 of the Act of 1881 (*m*) the certificate is to be in force within any part of the United Kingdom. By sect. 5 it is to be issued by the police authority in the area in which the pedlar has resided for one month previous to the application, if satisfied that he is above seventeen years of age, is of good character, and in good faith intends to carry on the trade of a pedlar. The application must be made in the form given in Schedule II. of the Act (*n*), and the fee is to be five shillings. The certificate is to remain in force for one year, when a new one may be granted ; if this is refused the pedlar may appeal to a court of summary jurisdiction under sect. 15 (*o*). A register of certificates must be kept in each police district, and also forms of application (*p*). The certificate must not be assigned nor borrowed, and there is a penalty for forging one (*q*). A person is not exempt from the Vagrancy Acts because he has such a certificate (*r*). If he is convicted of any offence under the Pedlars Act, his certificate must be endorsed by the court, and if he is convicted of any offence under any Act he may be deprived by the court of his certificate ; or the court may deprive him of it if he fails to show he is in good faith carrying on the business of a pedlar (*s*). A pedlar must show his certificate on demand to a justice of the peace, a policeman, or any person to whom he is offering goods or on whose grounds he is, and may be arrested if he refuses, and the police are empowered to inspect his pack (*t*).

By sect. 1 of the Revenue Act, 1867, as amended by sect. 9 of the Customs and Inland Revenue Act, 1888 (*u*), any pedlar selling in the ordinary course of his trading any article composed wholly or in part of gold or silver must pay certain duties according to the weight of the gold or silver. [346]

London.—The Public General Acts as to pedlars and hawkers apply equally to London. By sect. 5 and Sched. I. of the Pedlars Act, 1871 (*a*), pedlars' certificates may be granted by the Commissioner of Police of the Metropolis. By proviso 4 to sect. 20 of the Act (*b*), penalties

(*i*) 11 Halsbury's Statutes 477.

(*k*) (1829), 10 B. & C. 74 ; 33 Digest 566, 523.

(*l*) 11 Halsbury's Statutes 472.

(*n*) *Ibid.*, 478.

(*p*) Pedlars Act, 1871, ss. 8, 9 ; 11 Halsbury's Statutes 473.

(*q*) *Ibid.*, ss. 10, 11, 12.

(*s*) *Ibid.*, ss. 14, 16.

(*u*) 16 Halsbury's Statutes 579.

(*a*) 11 Halsbury's Statutes 472, 477.

(*m*) *Ibid.*, 480.

(*o*) *Ibid.*, 474.

(*r*) *Ibid.*, s. 13.

(*t*) *Ibid.*, ss. 17, 18, 19.

(*b*) *Ibid.*, 476.

recovered in the metropolitan police district are to be applied in the manner directed by the Metropolitan Police Acts. Sect. 1 of the Metropolitan Streets Act Amendment Act, 1867 (e), provides that sect. 6 of the Metropolitan Streets Act, 1867 (d), prohibiting the deposit of goods in the streets, shall not apply to costermongers, street hawkers or itinerant traders, so long as they carry on their business in accordance with police regulations. The L.C.C. (General Powers) Act, 1927 (e), provides that nothing in Part VI. of the Act (Regulation of Street Trading) shall restrict the right of any person holding a pedlar's certificate or a hawker's licence to carry on the business of a pedlar or a hawker (as the case may be) in accordance with such certificate or licence. By the Post Office Act, 1908, sect. 68 (3) (f), hawkers, etc., loitering on the pavement outside the G.P.O. in London are liable to a fine. The City of London (Street Traffic) Act, 1909, sects. 2, 8, empowers the City corporation to make regulations as to costers, hawkers and itinerant vendors in the City. Such regulations supersede any statutory provisions and street regulations on the subject. [347]

(c) 19 Halsbury's Statutes 163.
(e) S. 40; 11 Halsbury's Statutes 1300.

(d) *Ibid.*, 155.
(f) 13 Halsbury's Statutes 66.

PENALTIES

	PAGE		PAGE
INTRODUCTION - - - - -	150	Infectious Diseases - - - - -	153
RECOVERY - - - - -	151	Maternity and Child Welfare - - - - -	153
APPLICATION - - - - -	152	Nursing Homes - - - - -	154
Penalties in Statutes relating to Local Government - - - - -	152	Petroleum - - - - -	154
Administration - - - - -	152	Rating - - - - -	154
Celluloid and Cinematograph Film - - - - -	153	Ribbon Development - - - - -	154
Elections - - - - -	153	Sanitation and Buildings - - - - -	154
Food and Drugs - - - - -	153	Smoke Nuisance - - - - -	154
Housing - - - - -	153	Water Supply - - - - -	154
		LONDON - - - - -	154

*See also titles : Bye-Laws ;
Repair of Roads ;
Summary Proceedings.*

Introduction.—The Local Government and Public Health Consolidation Committee in its Second Interim Report (*a*) issued with the draft Public Health Bill said :

"The enactments dealing with penalties for non-compliance, which are reproduced in the Bill, show much diversity with regard to the maximum fines which may be imposed. This is to some extent necessary, for obviously some offences, e.g. that of erecting a house without a drain, for which a maximum penalty of fifty pounds is fixed by the Act of 1875, are of a more

(a) Cmnd. 5059, 1936, p. 17.

serious character and call for a stronger deterrent than the minor offences with which the Acts deal. On the other hand, it is clear that as regards these minor offences, Parliament has not adhered strictly to any definite policy and that while a maximum penalty of five pounds, with a daily penalty of forty shillings in the case of continuing offences may be taken to represent the normal, there are many departures from these figures for which no good reason could be assigned and which probably have their origin in the different language of different local Acts. . . . Throughout the Bill we have inserted five pounds and forty shillings as the maximum penalty for a first offence and for a continuing offence, in all cases except those which clearly called for special treatment." [348]

Recovery.—The general method of recovering penalties is stated shortly in sect. 296 of the P.H.A., 1936 (*b*), as "by prosecution under the Summary Jurisdiction Acts," and this is a simplified form of what is set out in the P.H.A., 1875 (*c*), and other Acts. By sect. 297 of the Act of 1936, in regard to a prosecution for a continuing offence (*d*), the court may fix a reasonable period from the date of conviction for compliance, before which the penalty does not run. By sect. 298 proceedings may only be taken by a party aggrieved or a council or body whose function it is to enforce the provision, except with the consent of the Attorney-General (*e*). By sect. 299 two or more sums may be included in one complaint. While the same method of recovery is provided in the Housing Act, 1936, sect. 66 of that Act enacts that the enforcement of the provisions as to overcrowding may be instituted by a local authority only, or against a local authority by another person with the consent of the Attorney-General. Sect. 251 of the L.G.A., 1933 (*f*), gives power to impose by bye-laws reasonable fines on persons offending against them, which are to be recoverable on summary conviction, not exceeding a sum fixed by the enactment conferring the power to make bye-laws, or if no such sum is fixed, the sum of five pounds and forty shillings a day for a continuing offence. [349]

Under the Summary Jurisdiction Acts, 1848 (*g*), 1879 (*h*), 1884 (*i*) and Criminal Justice Act, 1925 (*k*), and the Criminal Justice Administration Act, 1914 (*l*), the recovery is by means of a warrant of distress and committal, and by sect. 11 of the Act of 1848 (*m*) proceedings must be taken within six months. Where a statute gives a penalty to be levied by distress it gives power to sell without the use of express words (*n*). Where goods have been seized and the penalty afterwards

(*b*) 29 Halsbury's Statutes 514.

(*c*) See s. 251; 13 Halsbury's Statutes 730, and the title SUMMARY PROCEEDINGS.

(*d*) As to the difference between two separate offences and one continuing offence, see *Flack v. Church* (1917), 87 L. J. (K. B.) 744; 39 Digest 245, 275, and see also *Smedley v. Registrar of Companies*, [1919] 1 K. B. 97; 9 Digest 568, 3733, and *Rumbull v. Schmidt* (1882), 8 Q. B. D. 603; 26 Digest 502, 2572.

(*e*) See also s. 255 of the P.H.A., 1875, which still covers those sections of the P.H.A. not included in the Act of 1936; 13 Halsbury's Statutes 731. As to party aggrieved, see *Robinson v. Currey* (1881), 7 Q. B. D. 405; 32 Digest 530, 1844; *Verdin v. Wray* (1877), 2 Q. B. D. 608; 1 Digest 52, 417; *Ross v. Taylerson* (1898), 62 J. P. 181; 33 Digest 558, 413.

(*f*) 29 Halsbury's Statutes 442.

(*g*) Ss. 19—28; 11 Halsbury's Statutes 283—287.

(*h*) Ss. 5, 21; *ibid.*, 324, 332.

(*i*) S. 5; *ibid.*, 356.

(*k*) S. 31 (3); *ibid.*, 414.

(*l*) Ss. 1—4, 25; *ibid.*, 371 *et seq.* See also Summary Jurisdiction Rules, S.R. & O., 1915, No. 200 and S.R. & O., 1933, No. 1120/L.34.

(*m*) 11 Halsbury's Statutes 278.

(*n*) *Anon* (1671), T. Jo. 25; 18 Digest 429, 1682.

paid the distrainors are not answerable for any injury which may have happened to the goods subsequent to the penalty (o). [350]

Application.—Sect. 5 of the Criminal Justice Administration Act, 1914 (p), deals with the application of fines under the Summary Jurisdiction Acts and provides that the means of the offender must be taken into account. Court fees and police fees must be paid out first, then repayment to the informant or complainant of any cost or police fees paid by him, then court fees not paid out set out in a Table of Fees in Sched. I. of the Act (q), and police fees not paid out. The rest is then to be paid to the fund or person to whom it is directed to be paid by the enactment relating to the offence, or if there is no such fund or person, to the fund into which the court fees are paid (r). By sect. 254 of the P.H.A., 1875 (s), which applies to those sections of the P.H.A., 1875, 1890, 1907 and 1925, still unrepealed where the application of a penalty is not otherwise provided for, one-half goes to the informer, and the remainder to the council of the borough or district in which the offence was committed, and thus the council is entitled to the whole if they are the informer. Under sect. 96 of the Highway Act, 1885 (t), penalties recovered for not repairing a highway may be ordered by the court to be used for the repair of the highway, and under sect. 103 (a), penalties recovered for offences against the Act are to be paid one-half to the informer and the other half to the highway authority to be applied for the repair of the highway. Penalties under the Towns Improvement Clauses Act, 1847, are by sect. 210 of that Act, 1845 (b) to be applied as in the Railway Clauses Consolidation Act which, by sect. 150 (c), is one-half to the informer and the remainder to the local authority. By sect. 18 (5) of the Roads Act, 1920 (d), all penalties recovered under that Act are to be paid into the Exchequer, and proceedings must be taken within twelve months (e). Sect. 28 of the Finance Act, 1928 (f), extends this to penalties under the Road Transport Lighting Act, 1927 (g). By sect. 32 of the Food and Drugs (Adulteration) Act, 1928 (h), fines under that Act are to be paid to the sampling officer for the expenses of his authority, or if the court so directs to the prosecutor. [351]

Penalties in Statutes relating to Local Government.—While penalties in relation to local government are often £5 or less, heavier fines may be imposed in the following cases :

Administration.—By sect. 76 of the L.G.A., 1983 (i), a penalty up to £50 is imposed on members of a local authority, and by sect. 123 on officers, who vote on a contract where interested. An officer is liable to a fine up to £20 by sect. 199 if he does not make a return to the Minister of Health as to repayment of money borrowed; by sect. 207 if he refuses or neglects to insert particulars of mortgages in a register; by sect. 222 if he does not make a financial statement to the

(o) *Hutchings v. Morris* (1827), 6 B. & C. 464; 18 Digest 429, 1670.

(p) 11 Halsbury's Statutes 373.

(q) *Ibid.*, 388.

(r) See title SUMMARY PROCEEDINGS.

(s) 13 Halsbury's Statutes 731.

(t) 9 Halsbury's Statutes 107.

(a) *Ibid.*, 108.

(b) 13 Halsbury's Statutes 506.

(c) 14 Halsbury's Statutes 81, and Overseers Order, S.R. & O., 1927, No. 55.

(d) 19 Halsbury's Statutes 98.

(e) S. 13; *ibid.*, 97.

(f) 16 Halsbury's Statutes 1007.

(g) S. 10; 10 Halsbury's Statutes 104.

(h) 8 Halsbury's Statutes 904.

(i) 26 Halsbury's Statutes 346.

district auditor; and by sect. 246 where he fails to make local financial returns. By sect. 235 an officer may be fined up to £5 for a first conviction, and £20 for a second conviction for neglecting or disobeying the regulations of the Minister of Health as to audit. By sect. 290 (k) a fine up to £50 as well as imprisonment not exceeding six months may be imposed on persons who refuse or wilfully neglect to give evidence at local government inquiries. [352]

Celluloid and Cinematograph Film.—By sect. 3 of the Celluloid and Cinematograph Film Act, 1922 (l), a fine up to £50 and up to £10 each day for a continuing offence, may be imposed on an occupier contravening the provisions of sects. 1 and 2 of that Act, and by sect. 7 (m) a penalty up to £20 may be imposed on anyone obstructing the duty of an officer. [353]

Elections.—Offences in regard to elections under L.G.A., 1933, ss. 79–82 (n), are: failure of returning officer to conduct election (fine up to £100); defacing or destroying nomination papers (fine up to £20); offences in relation to ballot papers and boxes (fine up to £20); personation (fine up to £20). Except for the first offence a term of imprisonment may also be imposed. By paras. 18 and 19 of Sched. IX, (o) a fine up to £20 may be imposed for certain offences in connection with meetings of electors for promoting bills. [354]

Food and Drugs.—A maximum penalty of £5 is generally found under the Food and Drug Acts, but offences under the Milk and Dairies (Consolidation) Act, 1915 (p), may result in a fine of £5 for a first offence and £50 for a subsequent offence, and 40s. for each day continuing, and by sect. 5 of the Milk and Dairies (Amendment) Act, 1922 (q), the penalty for the sale of tuberculous milk is up to £20 for a first offence, and £100 for a second offence as well as imprisonment. Penalties for adulteration up to £50 may be imposed by sect. 1 of the Food and Drugs (Adulteration) Act, 1928 (r), and for other offences under the Act (s) up to £20 for a first offence, £50 for a second offence and £100 for a subsequent offence (t). [355]

Housing.—Under the Housing Act, 1936, larger penalties include that of £20 by sects. 10 and 159 (u) for obstruction in the execution of works; by sect. 14, £20 with £5 a day continuing for the contravention of a closing order; by sect. 62, £10 for not giving information in a rent book; by sect. 155, £20 and £5 continuing for occupying a building after a demolition or clearance order has been made; and by sect. 185, £50 in London for voting in a council when beneficially interested in a house under consideration by that council. [356]

Infectious Diseases.—Larger penalties as to infectious diseases under the P.H.A., 1936, may be imposed as follows: by sect. 143 a fine up to £100 and £50 for a continuing offence on any person neglecting or refusing to obey or obstructing the execution of any infectious disease regulations; by sect. 153 a fine up to £10 for contravening an order prohibiting homework where there is infectious disease; and by sect. 157 a penalty of £20 may be imposed for letting a house or room where there has been infectious disease. [357]

Maternity and Child Welfare.—By sect. 217 of the P.H.A., 1936 (a),

(k) 26 Halsbury's Statutes 450.

(l) 13 Halsbury's Statutes 979.

(m) *Ibid.*, 980.

(n) 26 Halsbury's Statutes 349, 350.

(o) *Ibid.*, 512.

(p) S. 18; 8 Halsbury's Statutes 872.

(g) *Ibid.*, 881.

(r) 8 Halsbury's Statutes 884.

(s) See *ibid.*, ss. 2, 3, 5, 6, 10, 12 and 30.

(t) S. 27; 8 Halsbury's Statutes 900.

(u) 29 Halsbury's Statutes 573, 669.

(a) *Ibid.*, 468.

persons guilty under that Act of offences relating to child life protection may be fined up to £25. [358]

Nursing Homes.—By sect. 187 of the P.H.A., 1936 (b), a penalty up to £50 added to imprisonment for a second offence, may be imposed for carrying on a nursing home without being registered. [359]

Petroleum.—Keeping petrol without a licence or contravening any condition of the licence may by sect. 1 of the Petroleum (Consolidation) Act, 1928 (c), be punished by a fine of £20. [360]

Rating.—By sect. 42 of the R. & V.A., 1925 (d), a penalty up to £20 with a continuing daily penalty up to 40s. may be imposed for refusing particulars asked for by a rating authority or assessment committee, and a penalty up to £50 for giving false information. [361]

Ribbon Development.—Under the Restriction of Ribbon Development Act, 1935 (e), a fine up to £50 may be imposed for contravention of restrictions as to access, and £5 per day for contravention of any condition, while by sect. 17 a fine up to £100 may be imposed for erecting a new building without compliance with an order. [362]

Sanitation and Buildings.—Penalties as to sanitation are contained in the P.H.A., 1936, and in the bye-laws made thereunder. Larger penalties include: by sect. 58 (f) a fine up to £10 as well as the pulling down of a building where an order has been made that it is dangerous; by sect. 59 a fine up to £20 may be imposed in regard to exits; by sect. 19 a fine up to £50 for constructing a drain or sewer otherwise than in accordance with the requirements of the authority, and by sect. 36 a fine up to £50 may be imposed on a person who makes a communication with a public sewer after a local authority has given notice that they intend to do so. By sect. 279 of that Act (g) a penalty up to £50 may be imposed on anyone breaking open a street belonging to a railway company or dock undertaking who have informed him that they wish to do the work themselves, and the same by sect. 121 in connection with water supply as to streets belonging to a local authority. [363]

Smoke Nuisance.—A fine up to £50 may be imposed for smoke nuisance under sect. 103 of the P.H.A., 1936 (h). [364]

Water Supply.—By sect. 187 of the P.H.A., 1936 (i), a fine up to £10 and 40s. each day continuing may be imposed where a new house is occupied without a certificate that it has a sufficient water supply, as well as smaller fines as to the care of meters, cisterns, etc. [365]

London.—The P.H. (London) Act, 1936 (k), provides that summary proceedings with regard to certain provisions of Part II. (Sewerage and Drainage) may be heard by a single justice. Sect. 73 provides that, except in certain cases, fines under Part II. shall, subject to sect. 5 of the Criminal Justice Administration Act, 1914 (l), be applied as follows:

If the informer is the county council or a borough council, the whole amount is to be paid to the informer. In any other case, half the amount is to be paid to the informer and the remainder is to be paid to the borough council in whose area the offence was committed, or, if the county council have sustained damage or

(b) 29 Halsbury's Statutes 452.

(d) 14 Halsbury's Statutes 670.

(f) 29 Halsbury's Statutes 368.

(h) *Ibid.*, 401.

(k) 26 Geo. 5 & 1 Edw. 8, c. 50, s. 72.

(c) 18 Halsbury's Statutes 1170.

(e) S. 11; 28 Halsbury's Statutes 90.

(g) *Ibid.*, 501.

(i) *Ibid.*, 422.

(l) 11 Halsbury's Statutes 373.

if the offence was committed in relation to the county council, to the county council. Provided that the whole of any fine imposed on a borough council is to be paid to the informer. [366]

Sect. 178 provides that, as regards fines under Part VII. (Public Baths and Washhouses) and bye-laws thereunder, the court may award half the fine to the informer and the remainder shall be paid to the borough council. Sect. 279 provides that all other penalties, the recovery of which is not otherwise provided for, may be recovered in a summary manner, and that proceedings for the recovery of a demand not exceeding £50 which under the Act may be recovered in a summary manner, may be taken in the county court as for a debt. Sect. 281 provides that, save as otherwise provided by the Act, all fines and sums recovered under the Act shall, subject to the provision of sect. 5 of the Criminal Justice Administration Act, 1914 (m), be paid to the sanitary authority, except that any fine imposed on a sanitary authority shall be paid to the county council. This section does not apply in relation to fines or other sums recoverable by virtue of Part II. (Sewerage and Drainage), Part XI. (Regulation of Nursing Homes) or Part XII. (Maternity and Child Welfare). [367]

The London Building Act, 1930 (n), provides that penalties may be recovered by summary proceedings. Sect. 190 provides that, except in certain cases (in which penalties are payable to the authority taking proceedings) half the penalty shall be paid to the county council, but the court may apply the whole or part of any penalty towards the cost of proceedings.

Penalties under the Metropolis Management Acts are to be applied as follows :

Half to the informer, remainder to the metropolitan borough council in whose area the offence was committed or to the L.C.C. if the offence is committed in respect of the L.C.C.; or, if a metropolitan borough council or the L.C.C. are informers, the whole goes to them and is applicable to their general expenses; provided that, if a borough council or the L.C.C. commits an offence, the whole of the penalty goes to the informer (o). Penalties must be recovered within six months of the commission or discovery of the offence (p). [368]

Under the Metropolitan Police Act, 1829 (q), penalties are payable to the receiver for the metropolitan police district. Under the Metropolitan Police Act, 1839 (r), costs for recovery of penalties and so much of every penalty as is not awarded to the informer or other persons who have contributed to the conviction, shall be paid to the receiver, and the residue shall be paid to the informer alone, or to the persons contributing to the conviction in such proportions as the magistrate thinks fit. Penalties recovered before justices in a summary manner shall (except where the penalty is payable to the informer or a party aggrieved and except penalties under the Revenue Acts) be paid to the receiver (s).

(m) 11 Halsbury's Statutes 373.

(n) S. 187; 23 Halsbury's Statutes 810.

(o) See the Metropolis Management Amendment Act, 1862, s. 105; 11 Halsbury's Statutes 992.

(p) *Ibid.*, s. 107.

(q) S. 37; 12 Halsbury's Statutes 757.

(r) S. 77; *ibid.*, 775.

(s) Metropolitan Police Courts Act, 1839, s. 47; 11 Halsbury's Statutes 257.

Where in the General Powers and other local Acts of the L.C.C. penalties are provided for, provision is usually made for their application. In certain cases penalties go to the L.C.C. or metropolitan borough council as may be specified, but in most instances the penalties go to the authority taking proceedings. In recent Acts specific provision is usually made for the recovery of penalties in a summary manner as a civil debt. [309]

PENNY RATE

	PAGE		PAGE
INTRODUCTORY - - -	156	APPLICATION TO EXCHEQUER	
APPLICATION TO PRECEPTS - - -	156	GRANTS - - -	158
		LIMITATIONS OF EXPENDITURE - - -	159

See also titles :

CONSOLIDATED LOANS FUND ;
EDUCATION FINANCE ;
HOUSING SUBSIDIES ;

PRECEPTS ;
RATE ACCOUNTS.

Introductory.—In general, the amount produced in a rating area by the levy of a rate of one penny in the £ is an index of the financial strength of the area; as between different rating areas, the penny rate product may vary from amounts under £30 in small rural districts to amounts exceeding £20,000 in the largest county boroughs. In particular, the penny rate product is an important factor of measurement in certain financial relationships between local authorities (notably between rating authorities and precepting authorities) and in the computation of certain Exchequer grants to local authorities. It is also employed as a limiting standard of expenditure of local authorities under a number of statutes. [370]

Application to Precepts.—The most important aspect of a penny rate is that which relates to the precepts which are served by a county council upon the urban and rural rating authorities in its area (see title PRECEPTS), and in this connection rules (a) have been made by the M. of H. under sects. 9 (4) and 58 of the R. & V.A., 1925 (b), prescribing the manner in which the product of a rate of a penny in the pound is to be estimated and calculated and the amount due under a precept ascertained. The duty of calculating the penny rate product at the close of the financial year is placed upon the financial officer of the rating

(a) The R. & V.A. (Product of Rates and Precepts) Rules, 1929; S.R. & O. 1929, No. 12, as amended by the R. & V.A. (Product of Rates and Precepts) Amendment Rules, 1933; S.R. & O., 1933, No. 786. The amending rules were made in order to enlarge the definition of "gross rate income" (by the insertion of the words printed in italics in note (c), *infra*) so as to bring into calculation increases of rate charges resulting from decisions on proposals having retrospective effect for the purpose of rate liability to previous financial years. The omission of these sums had operated inequitably to precepting authorities.

(b) 14 Halsbury's Statutes 631, 679.

authority. The product is to be calculated by deducting from the "gross rate income" (c) of the year the "cost of collection" (d) and the "loss on collection" (e) and by dividing the remainder (the "total rate product") by the number of pence representing the total poundage of the rate or rates levied in the rating area. Where a precept is issuable in respect of a portion only of the rating area, the product of a penny rate is to be separately computed for such portion.

If the poundage of the rate or rates of the financial year is not the same throughout the area or portion, as the case may be, the penny rate product must be calculated separately for each part in which a different poundage has been levied, and the sum of the several products then constitutes the product of a penny rate in the area or portion. [371]

Example :

Assume that

the area is rated throughout at one poundage	= 120 pence.
the "gross rate income" as shown in Rate Book	= £120,000.
the "cost of collection" (salaries of staff, stationery,	
postages and other office expenses)	= £1,500.
the loss on collection (the amount written off in the	
Rate Book in respect of voids, irrecoverables,	
and including allowances to owners but not dis-	
count allowed under R. & V.A., 1925, s. 8)	= £3,500
	—————
	£5,000
The "total rate product" will be — — — — —	= £120,000
The "product of a penny" rate is $\frac{1}{120} \times £120,000 = £1,000$.	

For the purpose of enabling county councils to issue their precepts, every rating authority affected must, before February 1 in each year, transmit to the county council which has power to issue a precept to it an estimate of the amount which would be produced in the next financial year by a rate of a penny in the pound levied in the rating area (f). This estimate is to be made in accordance with the principles

(c) "Gross rate income" means in relation to a rating area, or part of a rating area, and in relation to a financial year, the total of the gross amounts appearing in the rate book as assessed in respect of hereditaments in that area, or part of an area, by the rate or rates (including additional items) made in respect of that year, or any portion thereof, increased by the amounts of any payments receivable in respect of that year under s. 2 (7) of the R. & V.A., 1925 ; 14 Halsbury's Statutes 620, or under s. 133 of the Lands Clauses Consolidation Act, 1845 ; 2 Halsbury's Statutes 1160, as the case may be, and of any contributions made by the Crown ; and any amounts found during that year to be recoverable under s. 36 (2) of the R. & V.A. whether by virtue of s. 37 (10) of the Act or otherwise, or under or by virtue of s. 12 (6) of the Railways (Valuation for Rating) Act, 1930 ; 23 Halsbury's Statutes 472, or in respect of rates previously written off as irrecoverable.

(d) "Cost of collection" means (i.) in relation to a rating area as a whole, the net cost of making, collecting and recovering rates during a financial year, including a proper proportion of such expenses as are attributable in part to the matters aforesaid and in part to the making, collection or recovery of special rates, or to other matters, but not including any proportion of any allowances made to owners or occupiers, or any expenses incurred in connection with the preparation of valuation lists ; and (ii.) in relation to a part of a rating area, the sum which bears to the cost of collection in the rating area the same proportion as the total rateable value of that part of the area bears to the total rateable value of the whole area at the commencement of the financial year.

(e) "Loss on collection" means, in relation to a rating area or part of a rating area, and in relation to a financial year, the total amount written off during that year in the rate book as irrecoverable in respect of hereditaments in that area or part, whether in respect of a current rate or in respect of arrears of any previous rate, exclusive of any allowances made to owners or occupiers under the R. & V.A., 1925, s. 8 ; 14 Halsbury's Statutes 627, but including all other allowances, commissions and abatements.

(f) R. & V.A., 1925, s. 9 (2) (d) ; 14 Halsbury's Statutes 628.

of the rules as to the method of ascertaining the product of a penny rate; in so framing the estimate the financial officer must take the latest ascertained figures available and modify them to such extent as appears to him to be necessary, having regard to any alteration in total rateable value which may reasonably be anticipated and to any other material circumstances.

(As to the provisions in the rules as to the manner of calculating the amount due under a precept, see title *PRECEPTS*.)

The calculations required by the Product Rules must be included in the accounts submitted by a rating authority to the district auditor for certification. In particular the Rate Accounts Orders (g) prescribe that among the books of accounts and records to be kept of rate accounts there must be a Rate Produce Book, showing how the produce of a penny rate has been ascertained for the year, both in the rating area as a whole and in each part thereof in which the general rate is levied at a different poundage, and (rural district councils only) also how the produce of each special rate has been ascertained. [372]

Application to Exchequer Grants.—Penny rate product enters into the calculation of Exchequer grants in respect of elementary education (see title *EDUCATION FINANCE*, Vol. V., p. 170). For the purpose of calculating the product of a 7d. rate, which is a deductible factor in computing the elementary education grant, the Product Rules described above apply (h).

In respect of a housing scheme carried out by a local authority under the Housing, Town Planning, &c., Act, 1919 (i), the local authority must contribute towards the annual expenses of the scheme an amount equal to the produce of a penny rate in each year, the balance of the deficiency being provided, on an estimated basis, by the Exchequer (see title *HOUSING SUBSIDIES*). In ascertaining the produce of a penny rate for this purpose, however, the Product Rules described above do not apply. In accordance with provisions now enacted in the Housing Act, 1936 (k), the produce of a penny rate is to be deemed to be that proportion of the amount actually realised by the collection of rates (*i.e.* actual cash collected during the year, less refunds if any) which one penny bears to the total amount in the pound of the rate levied; where the area comprises two or more parts which are differentially rated, separate calculations must be made for each part, and the results of the separate calculations added together to ascertain the required product. [373]

Sect. 3 of the L.G. (Financial Provisions) Act, 1937 (l), which deals with the distribution of the General Exchequer Contribution to local authorities, provides that any deficiency in a county apportionment is to be made good in part by a contribution by the county council of either one-half the amount of the deficiency, or a sum equal to the product of a penny rate in the first year of the fixed grant period in which the deficiency occurs, whichever is the less. In this connection,

(g) The Rate Accounts (Rural District Councils) Order, 1926; S.R. & O., 1926, No. 1128, and the Rate Accounts (Borough and Urban District Councils) Order, 1926; S.R. & O., 1926, No. 1178.

(h) Elementary Education Grant Regulations, 1937; S.R. & O., 1937, No. 282, para. 10 (4).

(i) 18 Halsbury's Statutes 956.

(k) Sched. 7, para. 8; 29 Halsbury's Statutes 694.

(l) 1 Edw. 8 & 1 Geo. 6, c. 22.

the product of a penny rate means the aggregate of the products of a penny rate in each of the rating areas in the county, calculated in accordance with the Product Rules made under the R. & V.A., 1925.
[374]

Limitations of Expenditure.—In certain enactments a limit is imposed upon the expenditure of a local authority in any year by reference to a specified rate poundage, *e.g.* under the Health Resorts and Watering Places Act, 1936 (*m*), a borough or U.D.C. may spend not more than the amount of a rate of $1\frac{1}{2}d.$ upon advertising the amenities of the district. No indication is given in such provisions as to the manner in which the produce of the specified rate poundage is to be ascertained ; it is thought that in this connection the Product Rules made under the R. & V.A., 1925, would generally apply.

In the case of contributions by county and county borough councils towards the expenses of catchment boards, however, which must not normally exceed the estimated amount which would be produced by a rate of $2d.$ in the pound (*n*), it was decided in *R. v. Cambridgeshire County Council ; Ex parte The River Great Ouse Catchment Board* (*o*), that in estimating the amount it was not proper to make allowances for the cost of collection of the rate or for probable bad debts.

Under the Model Scheme of Loan Consolidation approved by the M. of H. (see title CONSOLIDATED LOANS FUND) certain standards of measuring profits and losses on capital transactions of the fund are to be determined by reference to the product of a penny rate, which is to be calculated as provided in the Product Rules made under the R. & V.A., 1925 (*p*). [375]

The expenses of a parish council (other than expenses under adoptive Acts) may not, without the consent of the parish meeting, exceed an amount equal to a rate of fourpence in the pound, or such higher rate as may be allowed by the Minister of Health, and may not exceed eightpence in the pound or such higher rate as may be allowed by the Minister. In a parish not having a parish council the expenses of the parish meeting (including expenses under adoptive Acts) may not exceed an amount equal to a rate of eightpence in the pound or such higher rate as may be allowed by the Minister (*q*).

(*m*) 29 Halsbury's Statutes 308.

(*n*) Land Drainage Act, 1930, s. 22 ; 23 Halsbury's Statutes 545 (see also title CATCHMENT BOARDS).

(*o*) [1937] 1 K. B. 201 ; [1937] 3 All E. R. 332 ; 101 J. P. 1 ; Digest Supp.

(*p*) *Ante*, p. 156.

(*q*) L.G.A., 1933, s. 103 ; 26 Halsbury's Statutes 411.

PENSIONS

See OLD AGE PENSIONS COMMITTEE ; ORPHANS' PENSIONS ; POLICE PENSIONS ; SUPERANNUATION.

PERFORMING ANIMALS

SCOPE OF ARTICLE	PAGE	OFFENCES AND LEGAL PROCEEDINGS	PAGE
RESTRICTION ON EXHIBITION OR TRAINING	160	ENFORCEMENT OF THE ACT	162
POWER OF COURTS TO PROHIBIT OR RESTRICT EXHIBITION AND TRAINING	161	EXEMPTIONS FROM APPLICATION OF THIS ACT	162
POWER TO ENTER PREMISES	161	PROTECTION OF ANIMALS ACT, 1934	162
		LONDON	163

See title ANIMALS, KEEPING OF, and titles there referred to.

Scope of Article.—This article deals with the powers and duties of local authorities under the Performing Animals (Regulation) Act, 1925 (*a*), which provides for the registration with a local authority of every person who exhibits or trains performing animals. [376]

Restriction on Exhibition or Training.—No person is to exhibit or train (*b*) any performing animal (*c*) unless registered with the local authority of the district in which he resides, or, if he has no fixed place of residence, with the local authority of such one of the prescribed districts as he may choose (*d*).

“Local authority” outside the City of London means the county council or county borough council (*e*).

The application for registration is to be accompanied by the prescribed fee and is to contain such particulars of the animals and general nature of the performance as may be prescribed (*f*), and these particulars are to be entered upon the register kept by the authority and open at all reasonable times for inspection on payment of the prescribed fee. The local authority must supply every registered person with a certificate of registration in the prescribed form, a copy of which is to be

(*a*) 1 Halsbury's Statutes 385.

(*b*) “Exhibit” means to exhibit at any entertainment to which the public are admitted by payment of money or otherwise, and “train” means to train for the purpose of such exhibition, and “exhibitor” and “trainer” have corresponding meanings; Performing Animals (Regulation) Act, 1925, s. 5; 1 Halsbury's Statutes 388.

(*c*) The expression “animal” does not include invertebrates; *ibid.*, s. 5.

(*d*) *Ibid.*, s. 1; 1 Halsbury's Statutes 385. The “prescribed districts” are those prescribed in the Performing Animals Rules, 1925 (S.R. & O., 1925, No. 1219), made under s. 5 of the Act of 1925.

(*e*) *Ibid.*, s. 5 (1).

(*f*) “Prescribed” means “prescribed by rules made by the Secretary of State.” Such rules, with forms for carrying the Act into effect, are contained in the Performing Animals Rules, 1925; S.R. & O., 1925, No. 1219.

transmitted to the Secretary of State and available for inspection at all reasonable times upon payment of the prescribed fee. On the application of a registered person the entry on the register may be varied and the existing certificate cancelled and a new one issued (g).
[377]

Power of Courts to Prohibit or Restrict Exhibition and Training.—Upon a complaint made by a constable or authorised officer of the local authority that the training or exhibition of a performing animal has been accompanied by cruelty a court of summary jurisdiction may make an order against the person in respect of whom the complaint is made, prohibiting the training or exhibition, or imposing such conditions as may be specified in the order (h). The power to impose conditions may be usefully exercised where there is no necessity to prohibit an exhibition, but need of improvement in the methods of keeping the animals or of regulating the number or duration of performances. There is an appeal to quarter sessions against such an order or a refusal to make one, and no order is to come into force until seven days after it has been made or, in the event of an appeal within that period, until the determination of the appeal (i). Copies of any order made are to be sent by the court to the appropriate local authority for entry of particulars thereof in the register, and to the Secretary of State. The certificate of registration is to be endorsed forthwith, the endorsement being cancelled in the event of a successful appeal (k).
[378]

Power to Enter Premises.—Powers of entry and inspection of premises where performing animals are being trained or exhibited are given to any officer of the local authority duly authorised and to any constable, but this will not entitle any constable or such officer to go on or behind the stage during a public performance (l). The limitation of the power of entry appears to be necessary in the interests of the safety of the trainer and stage attendants. [379]

Offences and Legal Proceedings.—If any person (a) not being registered exhibits or trains any performing animal, or (b) being registered exhibits or trains an animal with respect to or in a manner with respect to which he is not registered, or (c) fails to comply with an order of the court under sect. 2, or (d) obstructs any constable or officer of a local authority in the execution of his powers of entry or inspection, or (e) conceals any animal to avoid such inspection, or (f) being registered fails without reasonable excuse to produce his licence when duly required, or (g) applies for registration when prohibited from being registered, he is guilty of an offence against the Act and liable to a penalty on summary conviction of not exceeding £50 (m).

(g) Performing Animals (Regulation) Act, 1925, s. 1; 1 Halsbury's Statutes 385.

(h) *Ibid.*, s. 2 (1).

(i) *Ibid.*, s. 2 (2) (B). See title APPEALS TO THE COURTS.

(k) *Ibid.*, s. 2 (4). To obviate the necessity of a second sitting of the court making the order it is advised that a conditional order as to endorsement on and production of the certificate be made at the original hearing.

(l) *Ibid.*, s. 3.

(m) *Ibid.*, s. 4 (1).

Where any person is convicted under the Act or under the Protection of Animals Act, 1911 (*n*), as amended, the court may, in addition to or in lieu of a penalty, if he is registered remove his name from the register, or order him to be disqualified from registration either permanently or for a specified time. If such an order is made the certificate of registration must be endorsed and notice of the order must be given to the local authority for entry in the register, and to the Secretary of State (*o*). An appeal lies to quarter sessions against the conviction (*p*) and also against the order (*q*). [380]

Enforcement of the Act.—Most local authorities rely entirely on the police for the enforcement of the Act, although some authorities also appoint their veterinary inspectors as authorised officers.

The system of registration provided for by the Act was designed for regulating the conduct of a class of people which is regularly travelling from place to place. Registration in the district of residence or prescribed place was thus considered sufficient to cover exhibition or training in any place visited, and is permanent unless an order is made under sect. 2 or 4 (*r*), so that it is not necessary for application to be made to re-register except after a temporary disqualification. In the case of a visit to a place other than that of registration or in the case of an application for registration or re-registration after temporary disqualification under sect. 4 (2) (b), the constable or authorised officer may satisfy himself of the position by requiring the production of the certificate of registration, which should disclose in column 9 any orders of court, under either sect. 2 or sect. 4, or alternatively, if no certificate is produced or the officer is not satisfied, he may apply for information to the Secretary of State. The Secretary of State sends particulars of any orders under sect. 4 (2) to all local authorities within the meaning of the Act, and they are recorded by such authorities. Moreover, the police of the district, where such orders have been made, usually send particulars to the police of the next place of visit, if this is ascertainable. [381]

Exemptions from Application of the Act.—The Act does not apply to the training of animals for *bona fide* military, police, agricultural or sporting purposes, or the exhibition of any animals so trained (*s*). [382]

Protection of Animals Act, 1934.—Reference may usefully be made to the Protection of Animals Act, 1934 (*t*), which, though it does not place any duties upon local authorities, prohibits certain contests, performances and exhibitions with animals (such as are commonly called "rodeos"). Contravention of the Act is a summary offence punishable with a fine of £100, three months' imprisonment or both. [383]

(*n*) 1 Halsbury's Statutes 373.

(*o*) Performing Animals (Regulation) Act, 1925, s. 4 (2); *ibid.*, 387.

(*p*) Summary Jurisdiction Acts; 11 Halsbury's Statutes 203, title MAGISTRATES, and 26 Halsbury's Statutes 545 and title APPEALS TO THE COURTS.

(*q*) Performing Animals (Regulation) Act, 1925, ss. 2 (2), 4 (2); 1 Halsbury's Statutes 386, 387; see title APPEALS TO THE COURTS.

(*r*) *Supra.*

(*s*) *Ibid.*, s. 7; 1 Halsbury's Statutes 388.

(*t*) 27 Halsbury's Statutes 25.

London.—The Performing Animals (Regulation) Act, 1925, applies to London, the local authorities for the purpose of the Act being the City corporation as regards the City and the L.C.C. as regards the rest of the county (*u*). [384]

(*u*) S. 5; 1 Halsbury's Statutes 388.

PERSONATION

See CORRUPT AND ILLEGAL PRACTICES.

PERSONS AGGRIEVED

See OBJECTIONS STATED TO MINISTER.

PERSONS, CLEANSING OF

See CLEANSING OF PERSONS.

PERSONS OF UNSOUND MIND

PAGE	PAGE		
PRELIMINARY OBSERVATIONS AND GENERAL OUTLINE - - - - -	165	Discharge - - - - -	179
RATE-AIDED PATIENTS - - - - -	166	Death - - - - -	180
Out-patient Treatment - - - - -	166	Rate-aided Certified Patients in Licensed Houses - - - - -	180
Voluntary Treatment. Local Authorities' Powers - - - - -	166	Certification - - - - -	180
Voluntary Patients received into Mental Hospitals or Pre- mises provided under Men- tal Treatment Act - - - - -	167	Admission - - - - -	180
Admission - - - - -	167	Care and Treatment - - - - -	180
Departure - - - - -	167	Transfer - - - - -	180
Discharge by Board of Con- trol - - - - -	168	Discharge - - - - -	181
Guardians - - - - -	168	Death - - - - -	181
Death - - - - -	168	Mental Patients in Public Assistance Institutions and Municipal Hospitals - - - - -	181
Notices - - - - -	168	Patients receiving Out-relief - - - - -	182
Ill-usage - - - - -	168	PRIVATE PATIENTS - - - - -	182
Voluntary Patients Received Elsewhere than in Mental Hospitals, etc. - - - - -	168	Local Authorities' Powers - - - - -	182
Temporary Treatment. Local Authorities' Powers and Duties	168	Out-Patient Treatment - - - - -	182
Temporary Patients received in Mental Hospitals or Pre- mises provided under the Mental Treatment Act - - - - -	169	Private Voluntary Patients - - - - -	183
Admission - - - - -	169	Private Temporary Patients - - - - -	183
Care - - - - -	170	In Public Mental Hospitals, etc. - - - - -	183
Discharge - - - - -	171	Reception Elsewhere - - - - -	183
Death - - - - -	172	Private Patients under Reccep- tion Order - - - - -	184
Temporary Patients Received Elsewhere - - - - -	172	Admission into Public Mental Hospitals - - - - -	184
Admission - - - - -	172	Care and Treatment - - - - -	185
Care - - - - -	172	Discharge - - - - -	185
Discharge - - - - -	173	Death - - - - -	185
Death - - - - -	174	Admission Elsewhere - - - - -	185
Treatment under Reception Order - - - - -	174	Care and Treatment - - - - -	186
Local Authorities' Duties - - - - -	174	Discharge - - - - -	186
Certified Patients received in Mental Hospitals - - - - -	174	Death - - - - -	186
Procedures for Certification - - - - -	174	GENERAL ADMINISTRATION BY LOCAL AUTHORITY - - - - -	186
Admission to Mental Hospital	177	Visiting Committee - - - - -	186
Care and Treatment - - - - -	177	Provision of Accommodation - - - - -	187
Transfer - - - - -	179	Method of Provision - - - - -	187
Escape - - - - -	179	Plans and Contracts - - - - -	187
	179	Finance - - - - -	187
	179	Staffing and Management - - - - -	188
	179	Records - - - - -	188
	179	Statutory Visitation - - - - -	188
	179	Single Patients - - - - -	189
	179	Nomenclature - - - - -	190
	179	LONDON - - - - -	190

See also titles :

BOARD OF CONTROL;
MENTAL DEFECTIVES;
MENTAL DISORDER AND MENTAL
DEFICIENCY;

RATE-AIDED PERSONS OF UNSOUND
MIND.

PRELIMINARY OBSERVATIONS AND GENERAL OUTLINE

A person of unsound mind does not necessarily come within the purview of the Lunacy and Mental Treatment Acts. If he can be properly cared for in his own home, he may not require to be dealt with under those Acts. But the provisions of the Lunacy and Mental Treatment Acts will operate if he is received or detained in an institution for persons of unsound mind, *i.e.* a public mental hospital, registered hospital, licensed house or premises provided under sect. 6 (4) of the Mental Treatment Act, 1930 (*a*) ; or in a public assistance institution or general hospital or nursing home ; or if he receives relief on account of mental infirmity ; or if he is taken charge of for payment in single care (*b*). [385]

The statutory provisions governing the treatment of persons of unsound mind are to be found mainly in the Lunacy Acts, 1890, 1891, the Mental Treatment Act, 1930, and the Mental Treatment Rules, 1930 (*c*). [386]

In addition to providing for out-patient treatment, the Acts recognise three *types* of patient : (i.) Voluntary—*i.e.* a person who is desirous of voluntarily submitting himself to treatment and makes application to be admitted for that purpose. (ii.) Temporary—*i.e.* a person who is incapable of expressing willingness or unwillingness to receive treatment, and is admitted on the application of a husband or wife, a relative, or authorised officer of the local authority. (iii.) Certified—*i.e.* a person who is admitted pursuant to an order made by a magistrate. There are special expedients for dealing immediately with cases of urgency. [387]

There are two *classes* of patient—rate-aided and private ; the former being defined as a person wholly or partly chargeable to a county or county borough (*d*). The statutory requirements differ materially according as the patient is rate-aided or private. It is with the rate-aided patient that local authorities are mainly concerned. [388]

Subject to the qualifications specified in the subsequent sections, mental patients may be received into the following places : (i.) Mental Hospital—*i.e.* an institution for mental patients provided by a local authority or combination of local authorities. Premises provided for the purposes of the Mental Treatment Act, 1930—*i.e.* premises which a local authority are empowered by sect. 6 (4) of the Act to provide for voluntary and temporary patients. (ii.) Registered Hospital—*i.e.* an institution supported wholly or partly by voluntary contributions or by any charitable bequest or gift, or by applying the excess of payments of some patients towards the support of others. (iii.) Licensed House—*i.e.* an institution managed for private profit, and licensed by the Board of Control, or by justices of the county or county borough. (iv.) Public Assistance Institution. (v.) General Hospital—whether a voluntary general hospital or one provided by a local

(*a*) 23 Halsbury's Statutes 162.

(*b*) Lunacy Act, 1890, s. 315 ; 11 Halsbury's Statutes 122, and Mental Treatment Act, 1930, s. 22 ; 23 Halsbury's Statutes 173.

(*c*) S.R. & O., 1930, No. 1083 ; 23 Halsbury's Statutes 178.

(*d*) Lunacy Act, 1890, s. 341 ; 11 Halsbury's Statutes 132, as amended by L.G.A., 1929, Sched. X. ; 10 Halsbury's Statutes 995.

(N.B.—In the interpretation of the Lunacy Act, it is important to have regard to changes in the machinery of local government and in the poor law effected by the L.G.A., 1929, 1933 and the Poor Law Act, 1930).

authority under the L.G. or P.H.A. (vi.) Nursing Home—*i.e.* a private nursing establishment. (vii.) Single Care—*i.e.* in a private house or nursing home. [389]

The administration of the Acts and Rules is supervised centrally by the Lord Chancellor, the Minister of Health, and the Board of Control. (See title BOARD OF CONTROL, Vol. II., p. 121.)

Locally, the administration is entrusted to county councils and county borough councils and to certain non-county boroughs designated in Schedule IV. of the Lunacy Act, 1890 (e), of which there are now fifteen. There are three joint boards established by local Acts for the counties and county boroughs of Lancashire, Staffordshire and Yorkshire (West Riding) respectively; and the L.C.C. have special local Act powers for their area. [390]

As regards local authorities, the position very briefly is that they may provide facilities for out-patient treatment and for voluntary treatment. They must provide accommodation for rate-aided temporary and rate-aided certified patients; and they may provide accommodation for private patients. A patient is chargeable to the council of the county or county borough in which he has a poor law settlement; but, by sect. 18 of the Mental Treatment Act (f), a person is not deemed to be in receipt of poor relief by reason only of the fact that he, or a member of his family, is being maintained under the Lunacy or Mental Treatment Acts as a rate-aided patient. The local authority (except the L.C.C. and the three joint boards) are required to appoint a visiting committee, through whom they must exercise all the powers conferred upon them by the Lunacy and Mental Treatment Acts, except the power of raising a rate or borrowing money. The visiting committee so appointed is the visiting committee of each institution maintained by the local authority unless the institution was provided under an agreement to unite, when the committee appointed by that agreement functions. [391]

RATE-AIDED PATIENTS

Out-Patient Treatment.—Under sect. 6 (3) (a) of the Mental Treatment Act (g), a local authority has the power to arrange for treatment as out-patients of persons suffering from mental illness, either gratuitously or on such terms as they think fit.

A local authority has a discretion to provide an out-patient centre either at a mental hospital or at any other place, or by agreement with some other body, *e.g.* the managers of a voluntary hospital. [392]

Voluntary Treatment. Local Authorities' Powers.—The powers of the local authority are conferred by sect. 6 (2) of the Mental Treatment Act (h), and it is entirely within the discretion of a local authority to determine whether they will exercise the powers. They may receive a voluntary patient in any institution under their control on such terms and conditions as to payment, or otherwise, as may be agreed. Or, subject to the approval of the Board of Control, they may contract for the reception of voluntary patients in any registered hospital or in any hospital or nursing home approved by the Board.

Admission to "institutions" is regulated by Rule 4 of the Mental

(e) 11 Halsbury's Statutes 144.
(g) *Ibid.*, 161.

(f) 23 Halsbury's Statutes 170.
(h) *Ibid.*, 161.

Treatment Rules, which applies sect. 27 (8) of the Lunacy Act, 1890 (i), the effect of which is as follows : A rate-aided voluntary patient may be received into any institution which is maintained by a local authority and which either belongs wholly or partly to the county or borough from which the patient is to be received, or receives contributions from the borough from which he is to be received, or belongs to the county or county borough in which the patient is adjudged to be settled. Further, he may be received into any other such institution with the written consent of a member of the visiting committee of the institution. [393]

The chargeability of a rate-aided voluntary patient is determined by Rule 17, the effect of which is that the patient is deemed to be chargeable to the county or county borough from which he was received unless and until it can be established that he is settled in some other county or county borough. If a local authority, having accepted a patient for voluntary treatment, subsequently finds that he is in fact chargeable to another authority, they may recover from the liable authority the expenses incurred within twelve months prior to the date of the adjudication of settlement (k). As regards future expenses, it will rest with the liable authority to decide whether the person shall continue to be maintained as a voluntary patient. [394]

Voluntary Patients received into Mental Hospitals or Premises Provided under the Mental Treatment Act, sect. 6 (4) (l). *Admission.*—A person may be received as a voluntary patient on making written application for the purpose to the person in charge—e.g. the medical superintendent of the institution (m). A person under sixteen may be admitted on the written application of his parent or guardian accompanied by a medical recommendation that he is likely to be benefited by being received as a voluntary patient for treatment for mental illness (n). This recommendation must be signed by a registered medical practitioner who is either the patient's usual medical attendant or who has been approved for the purpose of making such recommendations by the Board of Control or the local authority within whose area the patient is (o). The recommendation is effective for fourteen days only from the date on which the medical practitioner examined the patient for the purpose (p).

A notice of reception must be sent to the Board of Control by the clerk of the institution or, if there is no clerk, by the person in charge (q). In the case of a patient under the age of sixteen, the notice must be accompanied by a copy of the medical recommendation (r). [395]

Departure.—Any voluntary patient is entitled to leave on giving the person in charge seventy-two hours' notice in writing of his intention to do so, or, in the case of persons under sixteen, on such notice being given by the parent or guardian (s).

If a voluntary patient becomes incapable of expressing himself as willing or unwilling to continue to receive treatment, he may not be

(i) 11 Halsbury's Statutes 29.

(k) Mental Treatment Rules, 1930, Art. 19 ; 23 Halsbury's Statutes 183.

(l) Mental Treatment Act, 1930, s. 6 (4) ; 23 Halsbury's Statutes 162.

(m) *Ibid.*, s. 1 (1).

(n) *Ibid.*, s. 1 (2).

(o) *Ibid.*, s. 1 (8).

(p) *Ibid.*, s. 1 (4).

(q) *Ibid.*, s. 2 (1).

(r) See Mental Treatment Rules, 1930, Art. 70, Form 20.

(s) Mental Treatment Act, 1930, s. 1 (5) ; 23 Halsbury's Statutes 155.

retained as a voluntary patient for more than twenty-eight days thereafter and must then be discharged unless, in the meantime, he has again become capable of so expressing himself, or steps have been taken to deal with him as a certified or temporary patient (*t*).

Notice of departure must be sent to the Board of Control in the form prescribed in Form 30 of the Mental Treatment Rules (*u*). [396]

Discharge by Board of Control.—A commissioner of the Board of Control may visit a voluntary patient at any time and report upon the case. The Board, if they are of opinion that the patient is unfit to remain on a voluntary footing, may order his discharge or that steps be taken to deal with him as a certified or temporary patient (*a*). [397]

Guardians.—If the parents or guardians of a patient under sixteen are incapable of performing, or refuse or persistently neglect to perform, their duties under the provisions of the Act, the person in charge must send a report to the Board of Control, who may then give such directions as they think fit in the case (*b*). [398]

Death.—Notice of death must be sent to the Board of Control and the clerk of the local authority to which the patient is chargeable (*c*). [399]

Notices.—Sect. 2 (5) of the Mental Treatment Act, 1930 (*d*), prescribes penalties for persons failing to forward the notices prescribed on the admission and death or departure of a voluntary patient. [400]

Ill-usage.—The Mental Treatment Rules Nos. 30 and 31 apply the provisions of sects. 322 and 324 of the principal Act, which prescribe penalties for the ill-treatment or neglect of any patient, or the abuse of any female patient. [401]

Voluntary Patients received Elsewhere than in Mental Hospitals, etc.—Rate-aided voluntary patients may be received also in any registered hospital and in any hospital or nursing home approved by the Board of Control. The provisions in the foregoing paragraphs apply. [402]

Temporary Treatment. Local Authorities' Powers and Duties.—It is the duty of the local authority to investigate the needs of their area and to take such steps as they consider necessary to provide and maintain suitable accommodation for the reception of temporary patients (*e*).

Subject to the approval of the Board of Control, the local authority have power (*f*) to contract for the reception of temporary patients in any registered hospital or in any institution (*i.e.* licensed house), hospital or nursing home approved by the Board of Control under sect. 5. So far as institutions maintained by a local authority are concerned, Rule 4 applies as in the case of voluntary patients (*ante*, pp. 166, 167). [403]

(*t*) Mental Treatment Act, 1930, s. 2 (3); 23 Halsbury's Statutes 155.

(*u*) *Ibid.*, s. 2 (1) and Mental Treatment Rules, Reg. 84; 23 Halsbury's Statutes 198.

(*a*) Mental Treatment Act, 1930, s. 3; 23 Halsbury's Statutes 156.

(*b*) *Ibid.*, s. 2 (4).

(*c*) Mental Treatment Rules, 1930, Reg. 86, Form 33; 23 Halsbury's Statutes 199.

(*d*) 23 Halsbury's Statutes 156.

(*e*) Mental Treatment Act, 1930, s. 6 (1); *ibid.*, 161.

(*f*) *Ibid.*

The chargeability of a temporary patient is determined by Rule 17 as follows : A temporary patient is primarily deemed to be chargeable to the county or county borough from which he was received, unless and until it can be established that he is settled in some other county or county borough. The Mental Treatment Rules (Nos. 18—28) apply to the case of temporary patients the provisions of sects. 288, 289, and 292 to 314 of the Lunacy Act, 1890 (g), in regard to the procedure for inquiry into settlement. The effect of these provisions is as stated in connection with certified patients, *post*, p. 174.

The liability of any relation or person to maintain a temporary patient is ensured by Rule 24 which applies sect. 296 of the principal Act (h). [404]

Temporary Patients Received in Mental Hospitals or Premises provided under Sect. 6 (4) of the Mental Treatment Act.—Temporary treatment is the form of treatment laid down in sect. 5 of the Mental Treatment Act, 1930 (i), whereby a person may be detained for a limited period without certification. The class of patient for whom this procedure is available is a person who is suffering from mental illness, and is likely to benefit by temporary treatment, but is for the time being incapable of expressing himself as willing or unwilling to receive such treatment. Patients received under this procedure are called temporary patients. [405]

Admission.—Application for admission must be made in writing in the form prescribed in the First Schedule of the Mental Treatment Act. It must be addressed to the person in charge of the institution to which the patient is to go ; and it must, if possible, be signed by the husband or wife, or by a relative of the patient, or on the request of the husband, wife or relative by a duly authorised officer of the local authority within whose area the person then is. If the application is not so made, it must contain a statement of the reasons and of the connection of the applicant with the patient and the circumstances in which he applies (k). This provision implies an obligation on the local authority to authorise an officer or officers to act, and in practice most local authorities have designated relieving officers to act as authorised officers.

The application must be accompanied by a medical recommendation in the form prescribed in Part II. of Sched. I. (l) signed by two registered medical practitioners, of whom one must be a practitioner (not the usual medical attendant of the patient) approved by the Board of Control, and the other must, if practicable, be the usual medical attendant (m). The recommendation must state that the patient is suffering from mental illness, is likely to benefit by temporary treatment, and is, for the time being, incapable of expressing himself as willing or unwilling to receive treatment. The Board of Control issue to local authorities from time to time lists of medical practitioners approved by them under this section. [406]

There must not be a greater interval than five clear days between the dates on which the patient was examined by the two medical practitioners respectively and any such recommendation, and the recommendation ceases to be effective on the expiration of fourteen

(g) 11 Halsbury's Statutes 115—122.

(i) 23 Halsbury's Statutes 157.

(k) Mental Treatment Act, 1930, s. 5 (2) ; *ibid.*, 157.

(l) *Ibid.* ; *ibid.*, 174.

(h) *Ibid.*, 117.

(m) *Ibid.*, s. 5 (3).

days from the date on which the patient was examined by the medical practitioners ; or, if the examinations took place on different dates, fourteen days from the date of the last examination (n).

Notice of the admission—together with a copy of the application and the recommendation—must be sent by the clerk of the institution to the Board of Control and to the clerk of the visiting committee (o). He must also send to the person who makes the application for reception, or, if application was not made by a relative, to any person named therein, a notice of the times and conditions of visitation ; and this notice must embody the effect of Rule 45 which relates to the discharge of a temporary patient on the application of a relative or friend (p). [407]

Care.—After the expiration of the second day and before the end of the seventh day after the admission of a temporary patient, the clerk of the institution must send a medical statement to the Board of Control (q).

Within one month of his reception a temporary patient must be seen by two members of the visiting committee. If they consider that it is proper for the patient to continue to be detained, they must sign a statement to that effect and leave it with the person in charge. If not, they must, before the expiration of the second day after their visit, send a report to the Board of Control stating the grounds on which they consider continued detention improper (r).

The period for which temporary treatment is permissible under the Act is, in the first instance, six months (s) ; but it can be renewed for further periods not exceeding three months at a time as may be specified in directions given by the Board of Control, and not exceeding in all a further total period of six months (t). Application for renewal must be made in Form I, prescribed in the Schedule of the Mental Treatment Rules (u). This includes a medical statement in the terms prescribed by sect. 5 (18) of the Act (a) that the patient is still incapable of expressing himself as willing or unwilling to receive treatment, that it is anticipated that the patient will not recover within the current period of temporary treatment, but that his early recovery thereafter appears to be reasonably probable. [408]

The Mental Treatment Rules apply a number of provisions of the principal Act designed to facilitate treatment and to afford safeguards in the case of temporary patients. The principal provisions are as follows :

Absence on trial : The person in charge may permit a temporary patient to be absent on trial, or for the benefit of his health, for such period as the person in charge thinks fit. The visiting committee may make an allowance to a rate-aided temporary patient absent on trial not exceeding his maintenance rate in the institution (b). [409]

Removal : A temporary patient may be removed from one institution, hospital or nursing home, or from single care, to another institution,

(n) Mental Treatment Act, 1930, s. 5 (5).

(o) *Ibid.*, s. 5 (6).

(p) Mental Treatment Rules, 1930, Reg. 73 ; 23 Halsbury's Statutes 196.

(q) *Ibid.*, Reg. 71, Form 24.

(r) Mental Treatment Act, 1930, s. 5 (9), (10) ; 23 Halsbury's Statutes 159.

(s) *Ibid.*, s. 5 (11).

(t) *Ibid.*, s. 5 (18).

(u) S.R. & O., 1930, No. 1083.

(a) 23 Halsbury's Statutes 160.

(b) Mental Treatment Rules, 1930, Reg. 5 ; *ibid.*, 170.

hospital or nursing home, or other single care, by order of a Commissioner of the Board. He may be removed by order of two members of the visiting committee of an institution maintained by a local authority into that institution from any other institution, hospital or nursing home, and he may be removed by order of two members of the visiting committee of an institution maintained by a local authority from such institution to any other institution into which he can be received under Rule 4, or to a registered hospital, or to a licensed house, hospital or nursing home approved by the Board. In the case of the removals pursuant to an order of two members of the visiting committee, there must be a medical certificate that the patient is fit to be removed (e). [410]

Notice of removal must be sent as in case of discharge. (See *post*, p. 172.) [411]

Mechanical Restraint : As for certified patients (d). (See *post*, p. 177.)

Seclusion : As for certified patients (e). (See *post*, p. 177.)

Correspondence : The person in charge is required to forward, unopened, all letters written by any temporary patient and addressed to the Lord Chancellor, any Judge in Lunacy, the Minister of Health, the Board of Control or any commissioner thereof, the person on whose application the patient was received or (if such person was not a relative) the relative named in the application, the Chancery Visitors, the visiting committee or any member of the visiting committee (f). [412]

Examination : As for certified patients (g). (See *post*, p. 178.)

Property : The Mental Treatment Rules (h) apply the provisions of sects. 299 and 300 of the Lunacy Act, 1890 (i), which empower a justice or a judge of county courts to make an order against the estate of a patient for the recovery of expenses incurred by a local authority. The rules (k) also apply the provisions of sect. 50 of the Lunacy Act in regard to inquiries into the extent and nature of a patient's property.

By sect. 5 (16) of the Mental Treatment Act, 1930 (l), the powers of the Judge in Lunacy under Part IV. of the Lunacy Act in regard to the management and administration of property are applied to temporary patients. (See *post*, p. 178.) [413]

Escape : If a temporary patient escapes, he may, subject to the provisions of sect. 5 of the Mental Treatment Act in regard to the limit of temporary treatment permissible, be re-taken within fourteen days by the person in charge of the institution or any officer or servant thereof, or by someone authorised by that person, and returned to care without fresh proceedings being taken under the Act (m). [414]

Discharge.—If a temporary patient becomes capable of expressing himself as willing or unwilling to receive treatment, he may not be detained for more than twenty-eight days thereafter unless, in the meantime, he again becomes incapable of so expressing himself (n).

The Board of Control may at any time order the discharge of a temporary patient or direct that steps be taken under the principal Act to deal with him as a person of unsound mind (o).

(e) Mental Treatment Rules, 1930, Regs. 8, 10, 11 and 13.

(d) *Ibid.*, Reg. 32.

(e) *Ibid.*, Reg. 76.

(f) *Ibid.*, Reg. 33.

(g) *Ibid.*, Reg. 35.

(h) *Ibid.*, Regs. 26, 27.

(i) 11 Halsbury's Statutes 117, 118.

(k) Mental Treatment Rules, 1930, Reg. 30.

(l) 29 Halsbury's Statutes 160.

(m) Mental Treatment Rules, 1930, Reg. 38.

(n) Mental Treatment Act, 1930, s. 5 (12). (o) *Ibid.*, s. 5 (14).

Certain of the provisions of the principal Act in regard to the discharge of persons of unsound mind are made applicable to temporary patients by the Mental Treatment Rules, namely : (i.) Any three members of the visiting committee of a public mental hospital may discharge a temporary patient therein (*p*). (ii.) Any two members of the visiting committee may discharge a temporary patient with the advice in writing of the medical officer (*q*). (iii.) The visiting committee may, if they think fit, discharge a temporary patient to the care of a relative or friend upon an undertaking being given to their satisfaction by the relative or friend that the patient shall no longer be chargeable to any local authority, and shall be properly taken care of and prevented from doing injury to himself or others (*r*). (iv.) The Board of Control may discharge after a report made by two medical practitioners authorised to visit and examine the patient (*s*).

The clerk of the institution must send notice of discharge to the Board of Control ; the clerk of the visiting committee ; the clerk of the local authority to which the patient is chargeable ; the person (other than an officer of the local authority) who made application for reception ; and, if the application was not made by a relative, to any relative named therein (*t*). [415]

Death.—On the death of a temporary patient, the person in charge must send to the coroner of the district a notice and statement as in Form 38 of the Mental Treatment Rules.

The clerk of the institution, or the person in charge, must send the notice and statement to the Board of Control ; the registrar of deaths for the district ; the person (other than an officer of the local authority) who made application for the patient's reception ; or any relative named in the application form ; the clerk of the visiting committee ; and the clerk of the local authority to whom the patient is chargeable.

The notice to be sent to the Board of Control must be accompanied by a copy of any letter written to the coroner (*u*). [416]

Temporary Patients received Elsewhere than in Mental Hospitals, etc.—Temporary patients may be received also in a registered hospital or in any licensed house, hospital or nursing home approved by the Board of Control. [417]

Admission.—The procedure outlined *ante*, p. 169, applies with the following additional provisions : (a) If a temporary patient is to be received in a licensed house or a nursing home, the medical recommendation accompanying the application may not be signed by the person in charge, or by anyone in his employment, or by a person interested in the house or home, or by anyone in the employment of any person so interested (*a*). (b) Notice of admission and a copy of the reception documents must be sent by the person in charge to the Board of Control and to the clerk to the visitors of licensed houses for the district in which the patient is (*b*). [418]

Care.—After the expiration of the second day and before the end of the seventh day after the admission of a temporary patient, the person in charge must send a medical statement to the Board of Control as in Form 24 of the rules (*c*).

(*p*) Mental Treatment Rules, 1930, Reg. 43 (1).

(*q*) *Ibid.*, Reg. 43 (2).

(*r*) *Ibid.*, Reg. 45.

(*s*) *Ibid.*, Reg. 35.

(*t*) *Ibid.*, Reg. 84.

(*u*) *Ibid.*, Reg. 85.

(*a*) Mental Treatment Act, 1930, s. 5 (3) ; 23 Halsbury's Statutes 157.

(*b*) *Ibid.*, s. 5 (6).

(*c*) Mental Treatment Rules, 1930, Regs. 71, 98.

Within one month of his reception a temporary patient, received elsewhere than in a mental hospital, must be seen by two of the visitors of licensed houses appointed for the district, of whom one must be a registered medical practitioner. They must either sign a statement that it is proper for the patient to continue to be detained, or, before the expiration of the second day after their visit, send a report to the Board of Control (d).

The period of temporary treatment and provision for extension is as set out *ante*, p. 170. [419]

The provisions outlined *ante*, p. 170, apply with the following modifications :

Absence on trial: Seven days before leave of absence is granted to a temporary patient in a nursing home, notice must be sent to the Board of Control; and a similar notice in respect of any extension of such leave (e). [420]

Removal: A rate-aided temporary patient in any registered hospital, licensed house, hospital or nursing home may be removed by order of the responsible local authority (f). Notice of removal must be given as in the case of discharge. (See *infra*.) [421]

Discharge.—The following are the principal provisions relating to the discharge of rate-aided temporary patients received elsewhere than in a mental hospital or in premises provided under sect. 6 (4) of the Mental Treatment Act, 1930 : (i.) If the patient becomes capable of expressing himself as willing or unwilling to receive treatment, he may not be detained for more than twenty-eight days thereafter, unless, in the meantime, he again becomes incapable of so expressing himself (g). (ii.) The Board of Control may at any time order the discharge of the patient or direct that steps be taken under the principal Act to deal with him as a person of unsound mind (h). (iii.) The local authority responsible for the maintenance of a temporary patient may order his discharge, subject to the proviso that if the medical practitioner in charge of the patient certifies in writing that the patient is dangerous and unfit to be at large, he may not be discharged unless a commissioner of the Board of Control, or the visitors in the case of a patient in a licensed house, consent in writing to the discharge (i). (iv.) Two visitors of a licensed house may discharge if it appears to them that the patient is detained without sufficient cause (k). (v.) If a patient recovers, the person in charge must give notice to the local authority to whom he is chargeable; and if the patient is not removed within seven days from the date of the notice, he must be discharged (l). (vi.) The Board of Control may discharge after a report made by two medical practitioners authorised to visit and examine the patient (m). [422]

The person in charge of a registered hospital, licensed house, hospital, or nursing home must send notice of discharge (Form 31) to the Board

(d) Mental Treatment Act, 1930, s. 5 (9), (10). In the metropolitan area this function is discharged by commissioners of the Board of Control, who are the visitors of the houses within their licensing jurisdiction as defined in the Third Schedule of the Lunacy Act, 1890.

(e) Mental Treatment Rules, 1930, Reg. 5 (2).

(f) *Ibid.*, Reg. 9.

(g) Mental Treatment Act, s. 5 (12); 23 Halsbury's Statutes 160.

(h) *Ibid.*, s. 5 (14).

(i) Mental Treatment Rules, 1930, Regs. 40, 41.

(k) *Ibid.*, Reg. 44.

(l) *Ibid.*, Reg. 48.

(m) *Ibid.*, Reg. 35.

of Control and to the clerk of the visitors ; and the person in charge of a hospital or nursing home must also send the like notice to the local authority to whom the patient is chargeable, and the person (other than an officer of the local authority) who made application for reception, and, if application was not made by a relative, to any relative named in the application (n). [423]

Death.—The person in charge must send a notice of death and statement (Form 33) to the coroner, the Board of Control, the registrar of deaths for the district, the person (other than an officer of the local authority) who made the application for reception, and, if such person is not a relative, to any relative named in the application, to the clerk to the visitors of licensed houses in the area, and to the clerk of the local authority to whom the patient was chargeable (o). The notice to be sent to the Board must be accompanied by a copy of any letter written to the coroner. [424]

Treatment under Reception Order. Local Authorities' Duties.—Every local authority is required by sects. 238 and 247 of the Lunacy Act to provide mental hospital accommodation for rate-aided mental patients, and may provide a mental hospital alone or unite with another local authority in providing a mental hospital or contract with another authority for the reception of its patients in the mental hospital of the latter (p). The expense of the provision of mental hospital accommodation is borne on the county or borough rate (q). The cost of maintaining patients in mental hospitals is borne on the rates of the county or county borough to which the patient is chargeable. [425]

The chargeability of patients is determined in accordance with the provisions of Part X. of the Lunacy Act, 1890 (r), as modified by the L.G.A., 1929 (s), and the Poor Law Act, 1930 (t). Primarily, a mental patient is deemed to be chargeable to the county council or county borough council of the area from which he is sent to an institution. But any two justices for the county or borough in which the institution is situate or which wholly or partly owns the mental hospital or from which the patient was sent may inquire into his settlement, and may make an order adjudicating his settlement to some other area (u). Against such decision there is a right of appeal to quarter sessions (a). These provisions, however, do not remove or affect the liability of any relative or person to maintain a patient (b), and the local authority are required under the Poor Law Act to recover the expenses incurred so far as practicable. [426]

Certified Patients received in Mental Hospitals. Procedures for Certification.—A rate-aided patient may be admitted to care through the operation of one or other of the following procedures :

(i.) Every district medical officer who has knowledge that a rate-aided person within his district is, or is deemed to be, of unsound mind and a proper person to be sent to a mental hospital, must within three days give notice in writing to the relieving officer of the district. Every relieving officer who has knowledge by such notification or any other

(n) Mental Treatment Rules, 1930, Regs. 84, 104.

(o) *Ibid.*, Regs. 85, 106.

(p) Lunacy Act, 1890, ss. 242, 243; 11 Halsbury's Statutes 100.

(q) S. 273; *ibid.*, 110.

(r) 11 Halsbury's Statutes 113.

(s) 10 Halsbury's Statutes 888.

(t) 12 Halsbury's Statutes 968.

(u) Lunacy Act, 1890, ss. 288, 289; 11 Halsbury's Statutes 115.

(a) *Ibid.*, s. 203.

(b) *Ibid.*, s. 206.

means must within three days give notice thereof to a justice who has jurisdiction in the place where the patient resides (c). [427]

(ii.) Every constable or relieving officer who has knowledge that any person, whether rate-aided or not, is wandering at large within his district and is deemed to be suffering from mental disorder, must immediately apprehend the patient, or cause him to be apprehended, and take him before a justice (d). [428]

(iii.) The justice before whom a patient in either of the foregoing circumstances is brought, must call in a medical practitioner. The justice must himself examine the patient and make such inquiries as he thinks fit. The medical practitioner must examine the patient and, if he is prepared to certify him as of unsound mind, the certificate must be in the Form 8 of the Second Schedule of the Lunacy Act, 1890 (e). If the justice is satisfied that the patient is of unsound mind and a proper person to be detained, and if the medical practitioner signs a medical certificate in the form prescribed, the justice may make an order directing that the patient be received and detained in the institution named in the order (Form 12), and the relieving officer or constable who brought the patient before the justice, or, in the case of a person wandering at large, any constable required by the justice to do so, must thereupon convey him to the institution named (f). A constable or relieving officer may, however, make arrangements for the performance of the duty by some other person (g). [429]

(iv.) Any relieving officer or constable who has knowledge that any person in his district not rate-aided and not wandering at large and who is deemed to be suffering from mental disorder is not under proper care and control or is cruelly treated or neglected, must within three days give information on oath to a judicial authority, i.e. a justice specially appointed under sect. 10 of the principal Act or a judge of county courts or stipendiary magistrate or metropolitan police magistrate. In this case the judicial authority calls in two medical practitioners, and there must be two separate medical certificates. The judicial authority may thereupon make an order in the Form 15 of the Second Schedule of the Act (h) directing the reception of the patient into any institution to which he could have been sent if he had been a rate-aided patient (i). The judicial authority is not required personally to see the patient. [430]

The admission of rate-aided patients to institutions is regulated by sect. 27 of the principal Act, as amended by the L.G.A., 1929, and Mental Treatment Act, 1930 (k), the effect of which is to admit a rate-aided patient to : (i.) a mental hospital which belongs wholly or in part to the county or borough from which the patient is to be received, or which receives contributions from the borough from which the patient is to be received, (ii.) a mental hospital having a contract for the reception of patients from the county or borough, (iii.) any mental hospital which belongs to the county or borough in which the patient is adjudged to be settled, and (iv.) any other mental hospital if the written consent of a member of the visiting committee is given to the proposed reception of the patient.

(c) Lunacy Act, 1890, s. 14.

(d) *Ibid.*, s. 15; 11 Halsbury's Statutes 24.

(e) 11 Halsbury's Statutes 187.

(f) Lunacy Act, 1890, s. 16.

(g) Lunacy Act, 1891, s. 2; 11 Halsbury's Statutes 144.

(h) 11 Halsbury's Statutes 140.

(i) Lunacy Act, 1890, s. 13; *ibid.*, 23.

(k) 10 Halsbury's Statutes 883 and 28 Halsbury's Statutes 154.

By sect. 3 of the Lunacy Act, 1891 (*l*), the patient on reception will be classified as a rate-aided patient until it is ascertained that he is entitled to be classified as a private patient. [431]

There are, however, certain emergency procedures which can be used to place the patient under care, if necessary, before the foregoing procedures are completed, *e.g.* a constable or relieving officer, if satisfied that it is necessary for the public safety or the welfare of the patient, may remove him to a public assistance institution or approved hospital (*m*), and the master or medical officer (unless there is no proper accommodation therein for the patient) must receive and detain him. The patient may not, however, be detained for more than three days, before the expiration of which the constable or relieving officer is required to bring the case to the notice of a justice with a view to proceedings being taken for the disposal of the case under one or other of the provisions indicated above (*n*).

In similar circumstances, any justice may order the removal of a patient to a public assistance institution or approved hospital, and the order will authorise his detention therein for a period not exceeding fourteen days (*o*).

A justice may also suspend the operation of a reception order made by him for fourteen days and, in the meantime, make arrangements for the proper care and control of the patient in a public assistance institution or approved hospital or elsewhere (*p*).

A duly authorised officer of a local authority may sign an order for the reception and detention of a patient in a mental hospital where it is expedient either for the welfare of the patient or the public safety. This urgency order must be accompanied by a medical certificate in the form prescribed in Form 8 of the Second Schedule to the Lunacy Act, 1890. The order remains in force for seven days (*q*). [432]

The validity of a medical certificate for the purposes of a reception order is governed by the following conditions: (i.) The certificate must be made and signed by a registered medical practitioner. It must state the facts upon which the medical practitioner has formed the opinion that the patient is of unsound mind; distinguishing between facts observed by the practitioner and facts communicated by others. A reception order may not be founded upon the latter alone (*r*). (ii.) The examination of the patient must have taken place not more than seven clear days before the date of the order; and, in the case of an urgency order, not more than two clear days before the patient's reception (*s*). (iii.) Where two certificates are required, each medical practitioner must examine the patient separately from the other (*t*). (iv.) Interested persons as defined by sect. 32 of the Lunacy Act, 1890, are debarred from signing certificates. [433]

(*l*) 11 Halsbury's Statutes 145.

(*m*) Under the Mental Treatment Act, 1930, s. 10; 23 Halsbury's Statutes 171, a hospital provided under the L.G.As. 1888-1929, or the P.H.A., 1875, may be approved by the local authority for reception of patients under the same procedures as govern their reception into public assistance institutions.

(*n*) Lunacy Act, 1890, s. 20.

(*o*) *Ibid.*, s. 21.

(*p*) *Ibid.*, s. 19; 11 Halsbury's Statutes 26.

(*q*) *Ibid.*, s. 11, as amended by Mental Treatment Act, 1930, s. 17; 23 Halsbury's Statutes 170.

(*r*) Lunacy Act, 1890, s. 28.

(*s*) *Ibid.*, s. 29 (1), (8).

(*t*) *Ibid.*, s. 29 (2).

Admission to Mental Hospital.—On the reception of a patient, the clerk of the institution must make the appropriate entries in the registers required to be kept at the institution, and must send to the Board of Control a notice of admission and a copy of the reception documents (*u*).

If upon examination by the Board any order or certificate for the reception of a patient is found to be incorrect or defective, it may, with the sanction of the Board, be amended within a period of fourteen days after the patient's reception. If any such certificate is not amended to the Board's satisfaction within the period, the Board may order the discharge of the patient (*a*). [434]

Care and Treatment.—After the second day, but before the end of the seventh day after a patient's admission, the clerk of the institution must send a medical statement to the Board of Control in Form 24 (*b*). He must also send notice of the times and conditions of visitation to all persons whose names appear as relatives or friends on the statement of particulars accompanying the reception order (*c*). This notice must embody the substance of sect. 79 of the Lunacy Act.

In every mental hospital certain books and records are required to be kept. These are specified in Rule 62 of the Mental Treatment Rules, and the relevant forms are prescribed in the Schedule. In particular, reference must be made to the provisions of the Act and the Rules regarding the continuation of reception orders. Under sect. 38 of the Lunacy Act, 1890 (*d*), as amended by sect. 7 of the Lunacy Act, 1891, a reception order operates for one year from its date, unless continued by a special report of the medical officer of the institution together with a certificate that the patient is still of unsound mind and a proper person to be detained under care. This report must be sent to the Board of Control not more than one month nor less than seven days before the expiration of the order; and the process must be repeated at the end of the second, fourth and seventh years after admission, and thereafter at the end of every five years. [435]

To facilitate the treatment and safeguard the well-being of patients, the following provisions are made by the Lunacy Act or Rules thereunder :

Mechanical Restraint: Mechanical restraint must not be applied to any patient unless it is necessary for purposes of surgical or medical treatment, or to prevent the patient from injuring himself or others. In every case where it is applied, a medical certificate must be signed describing the means used and the grounds upon which it was deemed necessary. A record of every case of mechanical restraint must be kept from day to day, and a copy of the record forwarded to the Board of Control by the person in charge at the end of every quarter (*e*). The means of mechanical restraint permissible are prescribed in the Regulation of the Board of Control, January 7, 1925 (*f*). [436]

Seclusion: By Rule 76, the person in charge of an institution is required to keep a weekly record of seclusion. The patient is deemed to be secluded if at any time between the period beginning one hour

(*u*) Mental Treatment Rules, 1930, Reg. 70; 23 Halsbury's Statutes 195.

(*a*) Lunacy Act, 1890, s. 34; 11 Halsbury's Statutes 32.

(*b*) Mental Treatment Rules, 1930, Reg. 71; 23 Halsbury's Statutes 195.

(*c*) *Ibid.*, Reg. 73 (*a*).

(*d*) 11 Halsbury's Statutes 33.

(*e*) Lunacy Act, 1890, s. 40; 11 Halsbury's Statutes 86.

(*f*) S.R. & O., 1925, No. 76.

after the day staff come on duty and ending at 7 p.m. he is isolated in a room the door of which is fastened or held so that he is unable to leave the room at will ; but not if he is isolated in a room in which the lower half of the door is so fastened or held but the upper half left open. [437]

Correspondence : The medical superintendent is required to forward, unopened, all letters written by any patient and addressed to the Lord Chancellor, any Judge in Lunacy, the Minister of Health, the Board of Control or any commissioner thereof, the person who signed the reception order, the Chancery Visitors, the visiting committee or any member of the visiting committee (g). [438]

Examination : On the application of any person, the Board of Control have power to make an order for the examination of any patient by two medical practitioners ; who must together examine the patient on two separate occasions with at least seven days intervening. If the medical practitioners certify their opinion that the patient may without risk or injury to himself or the public be discharged, the Board may, if they think fit, order discharge within ten days (h). [439]

Property : On a representation from the Board of Control, the Lord Chancellor may call for particulars of the nature and extent of a patient's property ; and the Board are also empowered to make inquiries to this end (i). The Board may report to the Lord Chancellor the case of any person whose property is not, in their opinion, duly protected or whose income is not duly applied for the patient's benefit (k). A local authority to whom a patient is chargeable can obtain from a magistrate an order against the property of the patient for the recovery of expenses incurred, if the magistrate is satisfied that the patient has real or personal property more than sufficient to maintain his family, if any (l). A judge of county courts can also make such an order (m). A judge of county courts may make an order for the management of a patient's property, if it does not exceed in value £200 and no friend or relative is willing to undertake the management (n). But it is now the general practice to deal with matters affecting the property of patients by proceeding under the provisions of sect. 116 *et seq.* of the Lunacy Act for the appointment of a receiver of the estate. Application is made for this purpose to the Management and Administration Department at the Royal Courts of Justice. [440]

Leave on Trial : Any two members of the visiting committee may, with the advice in writing of the medical officer, grant leave of absence on trial ; and the committee can make an allowance to the patient while on leave not exceeding the maintenance rate current in the hospital. The medical officer can at his own discretion allow a patient four days' leave (o). [441]

Visitation : The admission of visitors (relatives and friends) to mental hospitals is normally governed by the regulations of the hospital which the visiting committee are required to make under sect. 275 (p). But by sect. 47 of the Lunacy Act the Board of Control are empowered to make an order for the admission of any relative or friend or other

(g) Lunacy Act, 1890, s. 41.

(h) *Ibid.*, s. 49 ; 11 Halsbury's Statutes 40.

(i) *Ibid.*, s. 100.

(m) *Ibid.*, s. 300.

(o) *Ibid.*, s. 275 (5) ; 11 Halsbury's Statutes 111.

(p) *Ibid.*, 110.

(i) *Ibid.*, s. 50.

(l) *Ibid.*, ss. 299, 301.

(n) *Ibid.*, s. 132.

person to any patient. Visitation by statutory visitors is summarised, *post*, pp. 188—189. [442]

Boarding Out: By sect. 57 (g) the visiting committee of a mental hospital may board out a patient with any relative or friend if satisfied that his application therefor has been approved by the authority to whom the patient is chargeable. Where the proposed residence is outside the area of the responsible local authority, the approval of a justice having jurisdiction in that area is also required. [443]

Nursing: A male nurse may not be employed in the personal custody or restraint of any female patient (r). [444]

Transfer.—A commissioner of the Board of Control may order the transfer of a patient from one institution to another (s). A patient who is chargeable to any county or borough to which a mental hospital wholly or in part belongs, or who is chargeable to any county having a contract for the reception of patients therein, may be transferred to that hospital by order of two of the visitors of that hospital from any other mental hospital (t). Any two visitors of a mental hospital may order the transfer of patient to another mental hospital: but the patient must not be removed without the consent of a commissioner of the Board of Control except to a mental hospital within, or belonging wholly or in part to, the county within which the mental hospital from which the patient is removed is situate, or belonging to the county in which the patient may have been adjudged to be settled; or to a mental hospital into which the patient can be received under contract (u). [445]

Escape.—If a patient escapes, he may be retaken at any time within fourteen days and returned to the institution; but after the expiration of fourteen days he cannot be detained unless a fresh reception order has been obtained (a). If a patient escapes to Scotland or Ireland (b), he can only be retaken on a warrant issued by a justice. Application for such a warrant requires the authorisation of the Board of Control (c). [446]

Discharge.—At the time when a case comes before a justice, it is open to the relative or friend to retain or take the patient under his care if the justice who has jurisdiction to make the order, or the visitors of the mental hospital to which the patient is to be sent, can be satisfied that proper care will be taken of the patient (d). If, at the time of admission, the reception documents are defective and are not amended to their satisfaction within the fourteen days prescribed (e), the Board of Control may direct the discharge of the patient. A patient may be discharged by the visiting committee, or any three members thereof, if the continuation report does not appear to warrant continued detention (f). He may be discharged by any three members of the visiting committee, whether recovered or not, under sect. 77 (1), and by any two members of the committee with the advice in writing of a medical officer under sect. 77 (2) (g). The visiting committee or any two members of it may discharge the patient to the care of his friends

(q) Lunacy Act, 1890, s. 57; 11 Halsbury's Statutes 48.

(r) *Ibid.*, s. 53.

(t) *Ibid.*, s. 64.

(a) *Ibid.*, s. 85.

(b) Subject to the Irish Free State (Consequential Adaptation of Enactments) Order, 1923; S.R. & O., 1923, No. 405.

(c) Lunacy Act, 1890, s. 86.

(e) *Ibid.*, s. 34.

(g) 11 Halsbury's Statutes 48.

(s) *Ibid.*, s. 59.

(u) *Ibid.*, s. 65.

(d) *Ibid.*, s. 22.

(f) *Ibid.*, s. 38 (6) (b).

upon an undertaking to their satisfaction that the patient will no longer be chargeable to any authority and will be properly taken care of and prevented from doing injury to himself or others (h). The Board of Control may direct a patient's discharge upon the receipt of certificates from two medical practitioners authorised to examine the patient under sect. 49. Discharge results automatically by operation of the law if the continuation report is not sent in accordance with sect. 88 of the Lunacy Act, 1890, and sect. 7 of the Act of 1891; if at the expiration of leave of absence on trial a certificate is given that detention is no longer necessary; or fourteen days after the expiry of such leave in the absence of a certificate (i); or if the patient has escaped and has not been retaken within fourteen days (k). [447]

Death.—The person in charge must send to the coroner of the district a notice and statement as in Form 33 of the Mental Treatment Rules (l). The clerk of the institution must send a like notice and statement to the Board of Control; to the registrar of deaths for the district; to the clerk of the local authority to whom the patient is chargeable; to the relative or one of the relatives named in the statement of particulars accompanying the reception order (m). The notice to be sent to the Board must be accompanied by a copy of any letter written to the coroner. [448]

Rate-aided Certified Patients in Licensed Houses.—Rate-aided patients are now rarely to be found in licensed houses (n); but the following is a brief summary of the principal provisions relating to them:

Certification.—The procedures for certification under sects. 13—16 of the Lunacy Act apply; but the summary reception order can only require the reception of a rate-aided patient into a licensed house in pursuance of a subsisting contract (o). [449]

Admission.—In addition to sending to the Board of Control the documents indicated *ante*, p. 177, the person in charge must also, in the case of houses outside the Board's licensing jurisdiction (p), send notice of admission to the clerk to the visitors. [450]

Care and Treatment.—The provisions outlined *ante*, pp. 177—179, apply with the following exceptions: Any two of the visitors of a licensed house may grant a rate-aided patient leave of absence on trial and may order an allowance to be paid not exceeding the maintenance charge. A commissioner of the Board of Control may also grant such leave of absence (q). The boarding-out provisions of sect. 57 are not applicable. A visitor of a licensed house may give an order permitting any relation, friend or other person to visit a patient in a licensed house (r). [451]

Transfer.—A patient may be removed from one licensed house to

(h) Lunacy Act, 1890, s. 79; 11 Halsbury's Statutes 49.

(i) *Ibid.*, s. 55 (8).

(k) *Ibid.*, s. 85.

(l) S.R. & O., 1930, No. 1088.

(m) Mental Treatment Rules, 1930, Reg. 85; 23 Halsbury's Statutes 198.

(n) By the Lunacy Act, 1890, s. 269 (2), (8); 11 Halsbury's Statutes 108, and the Lunacy Act, 1891, s. 17; *ibid.*, 147, rate-aided certified patients are not now received in registered hospitals.

(o) Lunacy Act, 1890, s. 27 (4); 11 Halsbury's Statutes 30.

(p) *Ibid.*, Sched. III.

(q) *Ibid.*, s. 55 (6).

(r) *Ibid.*, s. 47.

another by an order of a commissioner of the Board (*s*). He may be transferred from a mental hospital to a licensed house under a contract by order of two visitors of the mental hospital with the written consent of two commissioners (*t*). [452]

Discharge.—A rate-aided patient may be discharged as follows : (i.) By the Board, if the continuation report is deemed inadequate (*u*). (ii.) By two commissioners if he appears to have been detained without sufficient cause (*a*). (iii.) By the visitors of the licensed house under sect. 78 of the Lunacy Act or by the authority liable for the patient's maintenance under sect. 78. (iv.) On the recovery of a patient the manager is required to notify the local authority liable for his maintenance, and if the patient is not removed within seven days he must be discharged (*b*). (v.) The provisions of sect. 49 for the examination and discharge of a patient by the Board of Control apply, as also do the above-mentioned provisions for discharge resulting by operation of law, *ante*, p. 180. [453]

Death.—The requirements indicated *ante*, p. 180, apply and, in addition, if the house is outside the Board's jurisdiction, the statutory notice and statement must be sent to the clerk of the visitors. [454]

Mental Patients in Public Assistance Institutions and Municipal Hospitals.—It may be convenient to summarise the provisions affecting the detention of mental patients in public assistance institutions or in any hospital provided by a local authority and approved for the reception of patients under sect. 10 of the Mental Treatment Act, 1930.

Under sect. 20 of the Lunacy Act, 1890 (*c*), a patient may be taken to such institution or hospital where a constable or relieving officer deems it necessary for the safety of the patient or the public, and he may be detained there for three days, during which time the constable or relieving officer must bring the case to the notice of a justice under sect. 13, 14 or 15 with a view to an order being made for his removal to a mental hospital.

Under sect. 21 a magistrate may make an order for a patient in similar circumstances to be removed to an institution or hospital and there detained for a period not exceeding fourteen days. [455]

Apart from these provisions, a person of unsound mind may only remain in an institution or hospital : (i.) if the medical officer gives a certificate in the terms prescribed by sect. 24 (1), in which case the patient may be detained for fourteen days ; or (ii.) if a magistrate makes an order in Form 11 to authorise the detention of the patient. Such an order may be made on the application of the relieving officer, and must be supported by a medical certificate in the form prescribed by the Act (*d*). [456]

Under sect. 25 (*e*), when a rate-aided patient is discharged from a mental hospital, if the medical officer of the mental hospital certifies that the patient has not recovered and is a proper person to be detained in a public assistance institution or approved hospital as a person of

(*s*) Lunacy Act, 1890, s. 59 (1).

(*t*) *Ibid.*, s. 65.

(*u*) *Ibid.*, s. 38 (6) (a).

(*a*) *Ibid.*, ss. 75, 76, and Mental Treatment Act, 1930, s. 13.

(*b*) *Ibid.*, s. 83.

(*c*) 11 Halsbury's Statutes 26 ; as amended by the 1930 Act ; 23 Halsbury's Statutes 171.

(*d*) Lunacy Act, 1890, s. 24 ; 11 Halsbury's Statutes 27.

(*e*) *Ibid.*, 29.

unsound mind, the patient may be received and detained in the institution or hospital if a certificate is given by the medical officer of the institution or hospital that the accommodation therein is sufficient for the patient's proper care and treatment. [457]

Patients described in the Lunacy Act as chronic and not being dangerous, on being selected and certified as proper for removal from a mental hospital to a public assistance institution or approved hospital, may, subject to the consent of the Minister of Health and the Board of Control and the regulations prescribed by them, be transferred to the institution or hospital; but patients received under this section continue on the books of the mental hospital for the purposes of the Act (f).

The power of discharge of persons of unsound mind in public assistance institutions and municipal hospitals is vested in the authority to which the premises belong (g). [458]

Patients Receiving Out-Relief.—A certain number of mental patients not in institutions for persons of unsound mind are in receipt of out-relief on account of their mental infirmity. Sect. 202 requires that they shall be visited once a quarter by the medical officer of the area in which they are resident, and a return of all such patients visited and of rate-aided persons of unsound mind in public assistance institutions and municipal hospitals must be made to the Board or Control (h). The medical officer must report to the visiting committee of a mental hospital as to the care of the patient in every case where, by order of the visiting committee, the patient has been delivered under sect. 57 to the custody of a relative or friend to whom an allowance has been made for the patient's maintenance. [459]

PRIVATE PATIENTS

Local Authorities' Powers.—The operation of sects. 13, 15 and 16 of the Lunacy Act, 1890 (i), may result in persons not in receipt of relief being sent to public mental hospitals. By sect. 3 of the Lunacy Act, 1891 (k), a patient sent under the foregoing provisions to a mental hospital must be classified as a rate-aided case until it is ascertained that he is entitled to be classified as a private patient.

Apart from the foregoing, local authorities are not required to provide accommodation for private patients; but, by sect. 255 of the Act (l) they are empowered to make such provision at a public mental hospital, subject to the approval of the Minister of Health; and sect. 271 of the Act provides for the reception of such private patients upon such terms as to payment and accommodation as the visiting committee think fit. The latter section further provides for the disposal of any profit made. [460]

Out-Patient Treatment.—Under sect. 6 (3) (a) of the Mental Treatment Act (m), local authorities are empowered to provide facilities

(f) Lunacy Act, 1890, s. 26; 11 Halsbury's Statutes 29.

(g) *Ibid.*, s. 81.

(h) Mental Treatment Rules, 1930, Reg. 126; 23 Halsbury's Statutes 206.

(i) 11 Halsbury's Statutes 23–25.

(k) *Ibid.*, 145.

(l) *Ibid.*, 104.

(m) Mental Treatment Act, 1930, s. 1 (1); 23 Halsbury's Statutes 161.

for out-patient treatment on such terms and conditions as they think fit. [461]

Private Voluntary Patients.—The provisions outlined *ante*, pp. 167—168, in regard to the admission and care of rate-aided voluntary patients in public mental hospitals apply also to private voluntary patients received in mental hospitals or premises provided under sect. 6 (4) of the Mental Treatment Act (*n*). [462]

Private voluntary patients may be received also in any registered hospital or licensed house, or in any hospital or nursing home not provided under sect. 6 (4) of the Mental Treatment Act, but approved by the Board of Control. The same provisions, *ante*, pp. 167—168, apply, with one important addition: a private voluntary patient may be received into single care, if the person receiving the patient is approved for the purpose by the Board of Control (*o*). [463]

Private Temporary Patients. In *Public Mental Hospitals, etc.*—The provisions already outlined in regard to rate-aided temporary patients (*ante*, pp. 169—172) apply to the reception of private temporary patients in public mental hospitals or premises provided under sect. 6 (4) of the Mental Treatment Act, subject to the following qualifications:

Absence on trial: The person in charge may permit the patient to be absent on trial or for the benefit of health, subject to the previous approval of the person having authority to discharge the patient, unless the person in charge is of opinion that there is adequate reason for dispensing with such approval (*p*). [464]

Removal: The person who has the power to discharge the patient may, with the consent in writing of a commissioner, order the patient's removal elsewhere (*q*). The patient may be removed by an order of a commissioner (*r*). [465]

Discharge: Power to discharge rests primarily with the person on whose application the private temporary patient was admitted, or, if that person is dead or incapable of acting, the discharge may be effected by the person who made the last payment on account of the patient, or the husband or wife, failing whom the father or the mother, failing whom the nearest of kin. In default of all of these, the Board of Control have power to discharge (*s*). As in the case of rate-aided temporary patients, two members of the visiting committee of a mental hospital may discharge with the written advice of the medical officer, and three members without such advice (*t*). If the patient regains volition he may not be detained for more than twenty-eight days thereafter, unless in the meantime he has again become incapable of expressing willingness or unwillingness to receive treatment (*u*). The Board of Control may direct discharge, after a report by two independent medical practitioners authorised by the Board to visit and examine the patient (*a*) or at any time (*b*). [466]

Reception Elsewhere.—Private temporary patients may be received also in any registered hospital, or in any licensed house, hospital or nursing home approved by the Board of Control or, with the consent

(*n*) 23 Halsbury's Statutes 162.

(*o*) Mental Treatment Act, s. 1 (1); see also *post*, p. 189.

(*p*) Mental Treatment Rules, 1930, Reg. 5; 23 Halsbury's Statutes 179.

(*q*) *Ibid.*, Reg. 7.

(*r*) *Ibid.*, Reg. 8.

(*s*) *Ibid.*, Reg. 39.

(*t*) *Ibid.*, Reg. 43.

(*u*) Mental Treatment Act, s. 5 (12).

(*a*) Mental Treatment Rules, 1930, Reg. 35.

(*b*) Mental Treatment Act, s. 5 (14); 23 Halsbury's Statutes 160.

of the Board, into single care (c). The provisions already outlined *ante*, pp. 172—174, regarding rate-aided temporary patients received elsewhere than in mental hospitals provided under sect. 6 (4) of the Mental Treatment Act apply with the following modifications : (i.) Absence on trial and removal are regulated as outlined *ante*, p. 188. (ii.) Discharge is regulated as outlined *ante*, p. 188, and in addition, if the patient is in a licensed house, two visitors of the house may discharge if it appears to them that the patient is detained without sufficient cause (d). If the patient is in a registered hospital, licensed house, hospital, nursing home or single care and recovers, the person in charge must give notice to the person on whose application the patient was received or by whom the last payment was made, and if the patient is not removed within seven days of the date of the notice he must be discharged (e). [467]

Private Patients under Reception Order. Admission into Public Mental Hospitals.—Private patients are received on a reception order for which a petition must be presented in accordance with sect. 4 and 5 of the Act (f). It must be made, if possible, by the husband or wife or relative of the patient. The petitioner must be over twenty-one years of age and must have seen the patient within fourteen days before the presentation of the petition. It must be supported by a statement of particulars as prescribed in Form 2 of the Second Schedule to the Act (g), and by two medical certificates in Form 8, the medical practitioners being required for the latter purpose to examine the patient separately. The petition must be presented to a judicial authority, i.e. county court judge, stipendiary magistrate, metropolitan police magistrate, or justice specially appointed (h), within seven clear days of the dates of the medical examinations, and the patient must generally be admitted within seven clear days of the date of the order of the judicial authority. Before making the order, the judicial authority has a discretion whether he will see the patient or not. If he does not see the patient, the patient upon admission has a right to be seen by some other judicial authority, unless the medical officer of the institution certifies that the exercise of such right would be prejudicial to the patient (i). [468]

To provide for cases of emergency an urgency order may be made by (if possible) the husband or wife or a relative of the patient (k). The order must be accompanied by one medical certificate in Form 8, and remains in force for seven days or, if a petition for a reception order is pending, until that petition is disposed of. [469]

Notice of admission and copies of the reception documents must be sent to the Board of Control, as in the case of a rate-aided patient received on a summary reception order; a medical statement must be sent within seven days; but there is a further special provision in the case of private patients, i.e. at the end of one month from the date of reception the medical officer must send to the Board a report on the mental and physical condition of the patient. On receipt of the

(c) Mental Treatment Act, s. 5 (1).

(d) Mental Treatment Rules, No. 44.

(e) Mental Treatment Rules, No. 48.

(f) 28 Halsbury's Statutes 156, 157.

(g) Lunacy Act, 1890, Sched. II., Form 2 ; 11 Halsbury's Statutes 185.

(h) *Ibid.*, s. 10.

(i) *Ibid.*, s. 8 ; 11 Halsbury's Statutes 20.

(k) *Ibid.*, s. 11.

report the Board may direct a visit by a commissioner or they may forward the report to the visiting committee, one or more members of which must thereupon visit the patient and report; and, on consideration of that report, the committee (or any three of them) may discharge the patient. Alternatively, the Board may order the discharge of the patient (l). [470]

Care and Treatment.—In the case of private patients, the same provisions generally apply as in the case of rate-aided patients regarding the following matters: continuation reports, records, mechanical restraint, seclusion, correspondence, examination, visitation, trial, escape (see *ante*, pp. 177—179). As regards property, the provisions indicated on p. 178 apply, with the exception of those relating to orders by a magistrate or judge of county courts. In regard to transfer, the person having authority to discharge the private patient may, with the consent of the Board, direct his removal elsewhere (m). [471]

Discharge.—The discharge of a private patient may be effected: (i.) by the Board of Control if the admission documents are defective (n); (ii.) by the Board of Control or the visiting committee after receipt of the month-end report (o); (iii.) by the visiting committee if dissatisfied with the continuation report (p); (iv.) by the Board of Control on examination of the patient under sect. 49; (v.) by three members of the visiting committee whether the patient is recovered or not, or by two members with the written advice of the medical officer (q); or (vi.) by the petitioner or, if he is dead or incapable of acting, by the person who made the last payment on account of the patient; failing whom, the husband or wife; failing whom, the father or mother; failing whom, the nearest of kin. In default of all the foregoing, the Board of Control may discharge (r). But a patient may not be discharged under the foregoing provision if the medical officer of the institution certifies in writing that the patient is dangerous and unfit to be at large unless two of the visitors of the institution consent in writing to the discharge (s). Discharge by operation of the law applies in the case of private patients in the same way as in the case of rate-aided patients (t). [472]

Death.—The same notices must be sent as in the case of rate-aided patients (*ante*, p. 180), with the additional requirement that the prescribed notice and statement must be sent to the person upon whose petition the patient was received or who made the last payment on account of the patient. [473]

Admission Elsewhere.—Private patients under reception order may be received elsewhere than in public mental hospitals, e.g. in a registered hospital, licensed house, or in single care. The provisions indicated *ante*, p. 184 and *supra*, apply with the following modifications in regard to the month-end report (u):

Licensed Houses: The visitors in the case of a house not within the immediate jurisdiction of the Board of Control, on receipt of the report, must arrange for the patient to be visited by the medical visitor; and if there appears to be doubt as to the propriety of detention, it must be reported to the Board of Control. [474]

(l) Lunacy Act, 1890, s. 39; 11 Halsbury's Statutes 35. (m) *Ibid.*, s. 58.

(n) *Ibid.*, s. 34.

(o) *Ibid.*, s. 39.

(p) *Ibid.*, s. 38.

(q) *Ibid.*, s. 77.

(r) *Ibid.*, s. 72.

(s) *Ibid.*, s. 74.

(t) See last para. of Discharge, *ante*, p. 180.

(u) Lunacy Act, 1890, s. 39. *

Single Patients: On receipt of the report the Board must arrange for a visit by a commissioner or by the medical visitor, or some other competent person, to report on the propriety of detention. [475]

Registered Hospitals: On receipt of the report the Board must arrange for a visit by a commissioner or send a copy of the report to the managing committee of the hospital, and one or more members must thereupon visit the patient. The committee or any three members may discharge the patient. [476]

The Board may order the discharge of any patient whose detention is reviewed under these provisions. [477]

Care and Treatment.—The same provisions, outlined *ante*, pp. 177–179, apply as in the case of rate-aided patients with the following modifications: **Visitation by Relatives or Friends:** Any visitor of a licensed house may give an order permitting any person to visit a patient in a licensed house (a). **Leave of Absence:** The granting of leave of absence on trial or for health in a registered hospital or licensed house or single care is subject to the previous approval of the person having authority to discharge the patient, unless the person in charge or a commissioner in the case of a single patient is of opinion that there is adequate reason for dispensing with such approval (b). The boarding-out provisions (*ante*, p. 179) are not applicable. [478]

Discharge.—The provisions set out under this heading, *ante*, p. 185, apply, with the exception of paragraphs (ii.) and (vi.) in so far as they relate to a visiting committee, (iii.) and (v.) and with the following additions: if the patient is in a licensed house, two visitors of the house may discharge (c); or if he is in a registered hospital, licensed house, or single care and recovers, the person in charge must give notice to the person on whose application the patient was received or by whom the last payment was made; and if the patient is not removed within seven days of the date of the notice he must be discharged (d). [479]

Death.—The same provisions apply, as indicated *ante*, pp. 180, 185. [480]

GENERAL ADMINISTRATION BY LOCAL AUTHORITY

The principal requirements of the Acts and rules in relation to the reception and treatment of voluntary, temporary and certified patients having been reviewed, it may be convenient to collate the main provisions relating to the administrative functions of the local authority and certain other provisions relating to mental treatment. [481]

Visiting Committee.—Every local authority is required to appoint annually a visiting committee, and through that committee they must exercise the powers and duties conferred upon the local authority by the Lunacy and Mental Treatment Acts except the power of raising a rate or borrowing money (e). The committee must consist of not less than seven members (two at least must be women), and the local authority is empowered to co-opt on the committee persons who are not members of the authority, provided that the co-opted members

(a) Lunacy Act, 1890, s. 47; 11 Halsbury's Statutes 38.

(b) *Ibid.*, ss. 55, 56; 11 Halsbury's Statutes 42, 43, and Lunacy Act, 1891, s. 10.

(c) *Ibid.*, s. 78.

(d) *Ibid.*, s. 83.

(e) Mental Treatment Act, 1930, s. 7; 23 Halsbury's Statutes 163.

shall not exceed one-third of the total number of the committee. The visiting committee is the visiting committee of each institution maintained by the local authority. It may appoint sub-committees, and, if the authority has more than one mental hospital, the committee must appoint a sub-committee for each such hospital. These provisions do not, however, affect the situation where two or more authorities have agreed to unite for the provision of a mental hospital, and a separate visiting committee for the joint institution is appointed in accordance with that agreement; except that as from the commencement of the Mental Treatment Act, 1980—*i.e.* January 1, 1981—each local authority appointing three or more members upon a joint committee under agreement to unite must appoint one woman. These provisions do not apply to the L.C.C., whose position is regulated by local Act, or to the joint boards for Lancashire, West Riding of Yorkshire and Staffordshire, where the position is modified by special rules made under sect. 21 of the Mental Treatment Act (*f*). [482]

Provision of Accommodation. *Method of Provision.*—Every local authority is required by sect. 238 of the Lunacy Act (*g*) to provide mental hospital accommodation for rate-aided certified patients. They are empowered by sect. 242 to provide the mental hospital alone, or they may unite with any other local authority or local authorities in providing accommodation jointly (*h*). The form of agreement is prescribed in Form 21 of the Second Schedule, and it cannot be carried into effect until it has been approved by the Board of Control. Local authorities may also contract with the visiting committee of a mental hospital for the reception therein of mental patients chargeable to them on such terms and conditions as may be agreed. The contract is subject to the approval of the Board of Control (*i*).

The power of local authorities' visiting committees to provide, equip and maintain mental hospitals is extended by sect. 6 (4) (*k*) of the Mental Treatment Act to the provision, equipment and maintenance of institutions for the purposes of the Mental Treatment Act. [483]

Plans and Contracts.—When a local authority proposes to provide accommodation, the plans and the contracts for the purchase of lands and buildings and for the erection, restoration or enlargement of buildings, require the approval of the Board of Control before they can be carried into effect (*l*). The visiting committee is required to report to the local authority all plans, estimates and contracts agreed upon and these are subject to the approval of the local authority, except where the sum to be expended does not exceed an amount previously fixed by the local authority. Where two or more authorities are acting jointly, if a difference occurs as to whether any plan, estimate or contract should be approved, the dissenting local authority must, within four months after the plan, estimate or contract has been reported to them, send a statement of their objection to the Board of Control, who may thereupon direct that the plan, estimate or contract be carried into effect with or without modifications. [484]

Finance.—The expenses of visiting committees for the provision

(*f*) S.R. & O., 1932, Nos. 666, 667, 668.

(*g*) Lunacy Act, 1890; 11 Halsbury's Statutes 99.

(*h*) *Ibid.*, ss. 242–253.

(*i*) *Ibid.*, ss. 243, 269.

(*k*) 23 Halsbury's Statutes 102.

(*l*) Lunacy Act, 1890, s. 254, and Lunacy Act, 1891, s. 16.

and maintenance of accommodation are met out of the county or borough fund (*m*). For the execution of schemes of any magnitude, local authorities normally meet the expenditure by raising a loan. But for the necessary and ordinary repairs and for smaller additions, alterations and improvements, the visiting committee of the mental hospital may, on their own authority, incur expenditure not exceeding a sum of £400 in any year (*n*). The visiting committee are empowered to maintain a building and repairs fund from surpluses accruing from the reception of private patients (*o*) and from the reception of patients chargeable to an authority other than that to which the mental hospital belongs (*p*). [485]

The visiting committee are required by sect. 283 to fix a weekly sum as the rate for the maintenance of rate-aided mental patients in the hospital, and the charge is met by the public assistance committee. [486]

Staffing and Management.—The visiting committee of every mental hospital are required by sect. 276 to appoint a chaplain, a medical officer (who must reside at the hospital), a clerk and a treasurer, and may appoint such other officers and servants as they think fit. The visiting committee are required to appoint a medical officer to be superintendent of the mental hospital unless the Minister of Health authorises them to appoint some person other than a medical officer. [487]

If a local authority own two or more mental hospitals, they may appoint a supervising medical officer, who may be one of the resident medical superintendents, to have general supervision over all of those hospitals. Where such appointment is made, the local authority are required, subject to the approval of the Board of Control, to make rules defining his duties and the relations between him and the medical superintendents of the several hospitals (*q*). [488]

The visiting committee, within twelve months after the completion of the mental hospital, are required to submit to the Board of Control general rules for the government of the hospital, which, after approval, must be printed and observed. They may not be altered without the approval of the Board. The visiting committee are also required to make regulations (not inconsistent with the general rules) specifying the number and description of officers and servants and their respective duties and salaries (*r*). [489]

Records.—The Mental Treatment Rules, Part VIII., prescribe in detail the records which must be kept in every mental hospital in relation to voluntary, temporary and certified patients; the returns which the clerk, or the person in charge, is required to furnish in regard to patients received in the hospital, and the notices to be sent on their admission, transfer, discharge or death, together with the notices in regard to any changes in the medical staff or the dismissal of any members of the staff. [490]

Statutory Visitation.—The provisions in regard to statutory visitation may be summarised as follows:

Mental hospitals must be visited: (i.) by two commissioners of the Board of Control at least once a year, who must make the inquiries

(*m*) Lunacy Act, 1890, s. 273.

(*n*) *Ibid.*, s. 266.

(*o*) *Ibid.*, s. 271 (2).

(*p*) *Ibid.*, s. 283 (4).

(*q*) Mental Treatment Act, 1930, s. 8; 28 Halsbury's Statutes 164.

(*r*) Lunacy Act, 1890, s. 275; 11 Halsbury's Statutes 110.

specified in sect. 187 of the Lunacy Act; and (ii.) by two members of the visiting committee of the hospital once at least in every two months, who must make the inquiries specified in sect. 188 of the Act.

Metropolitan licensed houses must be visited by two commissioners of the Board of Control four times in the year and by one or more twice in the year (*s*). The inquiries to be made are prescribed in sect. 194 of the Act. [491]

Provincial licensed houses must be visited: (i.) by two commissioners of the Board twice a year (*t*); and (ii.) by not less than two visitors (one of whom must be medical) of licensed houses appointed by the justices four times in the year, and by one or more of such visitors twice in the year (*u*). Registered hospitals must be visited by two commissioners every year (*a*). Patients in single care must be visited by one or more commissioners at least once a year (*b*).

The inquiries to be made by commissioners and visitors at visits to registered hospitals and licensed houses are specified in sect. 194 of the Lunacy Act, 1890, and by commissioners at visits to single patients in sect. 198 (*b*).

Visits by commissioners are subject to any direction given by the Board under sect. 13 of the Mental Treatment Act, 1930 (*c*), or to any dispensation by the Lord Chancellor given under sect. 191 of the Lunacy Act, 1890.

A commissioner of the Board may at any time visit any mental hospital (*d*), registered hospital (*e*), licensed house (*f*), or patient in single care (*f*), and inquire into any of the matters which commissioners are required to investigate at the prescribed visits. [492]

Single Patients.—A small percentage (0.2) of the total number of persons of unsound mind reside in private houses or nursing homes as single patients. They are all private cases.

A single patient may be received on a voluntary footing by any person approved by the Board of Control; or on a temporary footing with the Board's consent. A single certified patient may be received without any consent on the part of the Board. The relevant provisions are indicated under the appropriate headings, *ante*, pp. 183–185, but the following provisions are applicable generally to all single patients whatever their status: (i.) For every single patient a medical attendant must be appointed to visit as often as the Board of Control direct, and to make the statutory reports that may be required by the Board (*g*). (ii.) Every single patient must be visited at least once a year by commissioners of the Board (*h*). (iii.) In addition, a temporary single patient, if he is outside the immediate jurisdiction of the Board, must be visited within a month of admission by two of the visitors of licensed houses (*i*); or, if he is within the Board's jurisdiction, he must be visited in the same period by a commissioner of the Board.

(*s*) Lunacy Act, 1890, s. 191 (2).

(*t*) *Ibid.*, s. 191 (3); 11 Halsbury's Statutes 84.

(*u*) *Ibid.*, s. 193.

(*a*) *Ibid.*, s. 191 (4).

(*b*) *Ibid.*, s. 198.

(*c*) 23 Halsbury's Statutes 167.

(*d*) Lunacy Act, 1890, s. 187 (2); 11 Halsbury's Statutes 82.

(*e*) *Ibid.*, ss. 191 (1), 194.

(*f*) *Ibid.*, s. 199 (1).

(*g*) *Ibid.*, s. 44; 11 Halsbury's Statutes 38.

(*h*) *Ibid.*, s. 198.

(*i*) Mental Treatment Act, 1930, s. 5 (9); 23 Halsbury's Statutes 159.

(iv.) If anyone in charge of a single patient desires to take another single patient into his care, this is only permissible with the approval of the Board of Control (*k*). [493]

Nomenclature.—In conclusion, it is necessary to note the mandatory requirements of the Mental Treatment Act (*l*), the effect of which is that in any public or local Act or order, regulation or other document issued under any such Act, the words "mental hospital" must be used and the term "asylum" discontinued. Similarly, the word "pauper" must not be used in relation to any person of (or alleged to be of) unsound mind in any enactment, order, regulation or document issued under the enactment. In place of "pauper" the expression "rate-aided person," "rate-aided patient" or "rate-aided" must be substituted as the context requires. Further, the word "lunatic" (except in the phrase "criminal lunatic") must cease to be used in relation to any person of (or alleged to be of) unsound mind, and in substitution therefor one or other of the following expressions must be used as the context may require, namely, "person of unsound mind," "person," "patient of unsound mind," "patient," or "of unsound mind." [494]

London.—See titles MENTAL DISORDER AND MENTAL DEFICIENCY and PUBLIC ASSISTANCE IN LONDON.

(*k*) Lunacy Act, 1890, s. 46.

(*l*) *Ibid.*, s. 20; 23 Halsbury's Statutes 171.

PETROL FILLING STATIONS

GENERAL —	PAGE	PAGE	
CONTROL OF ERECTION OF PETROLEUM FILLING STATIONS	190	Removal of Existing Filling Stations	192
Power to Make Bye-Laws	191	Penalties	192
Bye-Laws	191	TOWN AND COUNTRY PLANNING	193
		ACCURACY OF PETROL PUMPS	194
		LONDON	195

See also titles: PETROLEUM;
TOWN PLANNING SCHEMES;
WEIGHTS AND MEASURES.

General.—The law specifically relating to petrol filling stations is designed to secure the control of their erection and to ensure the accuracy of petrol pumps erected thereon. Control of their erection may be effected under the specific provisions of sect. 11 of the Petroleum (Consolidation) Acts, 1928, and the general law relating to town and country planning. The accuracy of petrol pumps is ensured by regulations made by the Board of Trade under the Weights and Measures Acts, 1904 and 1926, by means of specific requirements as to their construction, verification and inspection. [495]

Control of Erection of Petroleum Filling Stations. *Power to make Bye-Laws.*—For the purpose of preserving for the enjoyment of the public the amenities (a) of any rural scenery, any place of beauty or historic interest, any public park or pleasure promenade or any street or place which is of interest by reason of its picturesque character, bye-laws may be made regulating the appearance of petroleum filling stations (b) or prohibiting their establishment (c). Such bye-laws may, without prejudice to the generality of the above-mentioned purposes, in particular require compliance with provisions as to the position, design, size, colour and screening of filling stations or any part of them (d).

Except in the City of London where the Common Council of the City are the authority in whom the powers and duties conferred by the Act are vested (e), bye-laws may be made by the council of any county or borough (f).

No bye-laws made by a county council have effect in any borough in the county (g), and in urban districts the U.D.C. have power to enforce within their district any bye-laws which are in operation (h). Nothing in any bye-laws regulating the appearance of petrol filling stations may prevent the use of any pump or other apparatus approved for use by the Secretary of State (i). [496]

In making bye-laws regulating the appearance of filling stations, a council must exempt existing stations from any restrictions requiring structural alteration for a period of not less than two years (k), and in making bye-laws prohibiting the establishment of filling stations must have regard to the need for reasonable facilities for the supply of petroleum in or near the part of their area to which the bye-laws apply (l). The area of a council to which bye-laws or a draft of any bye-laws apply must be distinctly shewn on plans which must be signed, deposited and available for inspection as prescribed by the Act (m). No bye-laws may come into force until confirmed by the Secretary of State, after compliance with prescribed formalities as to public advertisement and notice (n). [497]

Bye-Laws.—In 1929 the H.O. issued a form of model bye-laws which are based on the Report and Supplementary Report of the Petroleum Filling Stations Committee appointed in 1928 and suggested

(a) "Amenities" in relation to any place includes any view of or from that place. Petroleum (Consolidation) Act, 1928, s. 23; 13 Halsbury's Statutes 1185.

(b) "Petroleum filling station" means any premises or place used or intended to be used by way of trade or for purposes of gain for fuelling motor vehicles with petroleum and includes any building, advertisement, pump or other apparatus in or used in connection with any such premises. "Petroleum" includes crude petroleum, oil made from petroleum or from coal, shale, peat or other bituminous substances and other products of petroleum. *Ibid.*; 13 Halsbury's Statutes 1186.

(c) Petroleum (Consolidation) Act, 1928, s. 11 (1); 13 Halsbury's Statutes 1176.

(d) *Ibid.*, 1176.

(e) *Ibid.*, s. 11 (1) (i).

(f) *Ibid.*, s. 11 (1); 13 Halsbury's Statutes 1176. The expenses incurred by a county council under the section must be defrayed as part of their expenses for general county purposes; *ibid.*, s. 11 (7).

(g) *Ibid.*, s. 11 (1) (ii); 13 Halsbury's Statutes 1177.

(h) *Ibid.*, s. 11 (8). Any expenses so incurred may be defrayed as part of the general expenses of the U.D.C.

(i) *Ibid.*, s. 11 (1) (iii); 13 Halsbury's Statutes 1177.

(k) *Ibid.*, s. 11 (1) (iii).

(l) *Ibid.*, s. 11 (1) (iv).

(m) *Ibid.*, s. 11 (2).

(n) *Ibid.*, s. 11 (3).

that the councils concerned, if they had not already done so, should examine the needs of their area with a view to adopting bye-laws on the lines recommended by the Committee (o). The model bye-laws refer to a map of the council's area on which the areas where the appearance of petrol filling stations are to be subject to regulation are coloured blue, and the areas where such stations are absolutely prohibited are coloured red. [498]

Part I. of the model bye-laws relates to the area coloured blue and provides that in such area no filling stations are permitted to be visible unless their appearance is such as not to affect injuriously the enjoyment by the public of any view of or from any rural scenery, any place of beauty or historic interest, or any public park or pleasure promenade or any street or place which is of interest by reason of its picturesque character (p), and without prejudice to the generality of these requirements prohibits the exhibition of any visible advertisement, name or lettering used in connection with the filling station subject to certain exemptions in respect of the indication of the names of the filling station and of the occupier, the brand of fuel or oil supplied, the commodities sold and other specified particulars (q).

Part I. also contains provisions as to the painting and colouring of visible apparatus and the materials of which the visible walls and roofs are to be constructed, prohibits intermittent illuminations from visible lamps, and requires a filling station to be kept in a tidy and orderly condition (r). It is also provided that persons beginning to establish or alter the appearance of any filling station in the area coloured blue must six weeks before so doing notify the clerk or the surveyor of the council making the bye-laws, and forward prescribed plans and particulars of the proposed works (s).

Part II. of the model bye-laws prohibits the establishment, in any part of the area marked red on the plan, of any visible petrol filling station (t). [499]

Removal of Existing Filling Stations.—Where there are bye-laws prohibiting the establishment of petrol filling stations in any part of their area, the council may secure the removal therefrom of all existing filling stations subject to compliance with certain statutory requirements as to notice and the payment of the expenses of removal and compensation (u). [500]

Penalties.—Any person contravening any bye-laws made or notice served under sect. 11 of the Act is liable on summary conviction to a fine not exceeding twenty pounds for each day on which the contravention occurs or continues (a). If after a person has been convicted of contravening any bye-laws prohibiting the establishment of a filling station or any notice served under sect. 11 of the Act requiring the

(o) Report of the Petroleum Filling Stations Committee, dated May 8, 1920, and Supplementary Report dated July 22, 1920. This committee was appointed by the Home Secretary to advise as to the most suitable measures for carrying out the object of s. 11 of the Act and their reports contain useful information as to the considerations to be borne in mind when formulating bye-laws.

(p) Model bye-law 2.

(q) Model bye-law 2 and Scheds. I. and II.

(r) Model bye-law 3.

(s) Model bye-law 4.

(t) Model bye-law 5.

(u) Petroleum (Consolidation) Act, 1928, s. 11 (4); 18 Halsbury's Statutes 1177.

(a) *Ibid.*, s. 11 (6).

removal of a filling station he fails to remove such filling station within the time allowed by the court, the council are empowered to effect such removal and recover from him summarily the cost thereof as a civil debt (b).

The occupier of premises used or to be used as a petrol filling station may do all things necessary to comply with any bye-laws or any notice served under sect. 11 of the Act, notwithstanding anything in any conveyance, lease or other agreement (c). Where a notice has been served under sect. 11, the council who served the notice may with the consent of the occupier do anything on his behalf necessary for complying with the requirements of the notice (d). [501]

Town and Country Planning.—It is now a common practice for planning authorities to include in their planning schemes a provision for the control and establishment of petrol filling stations and it has been found that a more elastic type of control can thus be exercised than under bye-laws (e). This is usually done by means of a table incorporated in the scheme, shewing by reference to a map the areas in which various types of development are permitted or restricted. In this way, petrol filling stations may be specifically prohibited in certain areas, and permitted only with the consent of the planning authority in others (f).

It is customary for the planning scheme also to contain a provision requiring adequate notification to be given to the responsible authority under the scheme of the intention of any person to erect any building (g) to be used for the purposes of business or industry and enabling the responsible authority for the purpose of preventing obstruction of traffic on any highway or intended highway on which the proposed building would abut, to require the submission of proposals for securing that, so far as is reasonably practicable, suitable and sufficient accommodation is provided for any loading, unloading or fuelling of vehicles which are likely to be habitually involved in connection with the use of the building (h). [502]

(b) Petroleum (Consolidation) Act, 1928, s. 11 (6).

(c) *Ibid.*, s. 11 (5).

(d) *Ibid.*

(e) See para. 26 of Report of Petroleum Filling Stations Committee where it is stated that a discretionary power of control under the bye-laws would be *ultra vires*.

(f) Model clauses for use in the preparation of schemes issued by the M. of H., February, 1937, Part IV.

(g) Building is defined in s. 53 of the Town and Country Planning Act, 1932; 25 Halsbury's Statutes 520, as including "structures and erections," and it has been held that a petrol pump is an "erection": *Mackenzie v. Abbott* (1926), 24 L. G. R. 444; 33 Digest 216, 506. It appears also that a petrol pump may come within the meaning of "new building, erection or excavation" as contained in s. 38 of the P.H.A., 1925 (prescription of improvement lines); 13 Halsbury's Statutes 1128, "building" as defined in s. 11 and referred to in s. 5 of the Roads Improvement Act, 1925 (prescription of building lines); 9 Halsbury's Statutes 228, and "building" as defined in s. 24 (1) of the Restriction of Ribbon Development Act, 1935; 28 Halsbury's Statutes 97. The M. of H. have, however, advised that (in the absence of judicial authority) a petrol pump cannot be treated as a "building" to which bye-laws made under the P.H.A.s. would apply or a "temporary building" under s. 27 of the P.H.A. Amendment Act, 1907, although there would be nothing to prevent the application of building bye-laws to buildings used in conjunction with petrol pumps and forming part of the station.

(h) Clause 53, Model Clauses, *ante*. In this connection it is necessary to remember that s. 17 of the Restriction of Ribbon Development Act, 1935; 28 Halsbury's Statutes 276, enables local authorities to whom applications are made for the approval of plans for the erection of a new building to require as a condition of approval the provision and maintenance of such means of entrance and egress

In addition to the foregoing the planning authority may, once a resolution to plan has come into operation, and until the planning scheme has become effective, control the establishment of filling stations under the interim development provisions of the Act and orders made thereunder, but during this period no effective action can be taken in the event of the erection of a filling station in defiance or disapproval of any requirements of the planning authority until the scheme becomes effective.

The planning authority under the Town and Country Planning Act, 1932, have power to remove, pull down or alter any buildings not in conformity with the scheme subject to appropriate notice being given to the owner, the owner having the right to appeal to a court of summary jurisdiction where he disputes any allegation in the notice and to the payment of compensation in certain cases (i).

The M. of H. point out that, where appropriate provisions are made in a planning scheme for the prohibition and control of petrol filling stations, administration will be facilitated if any bye-laws under the Petroleum (Consolidation) Act, 1928, relating to the area concerned are repealed to that extent, control being left to the provisions of the planning scheme. [508]

Accuracy of Petrol Pumps.—Under powers given by sect. 5 of the Weights and Measures Act, 1904 (k), and sect. 2 of the Weights and Measures (Amendment) Act, 1926 (l), the Board of Trade have made regulations relating to the construction, inspection and testing of petrol pumps (m). Every measuring instrument (n) used for trade must be verified and stamped by an inspector of weights and measures (o), and before stamping it the inspector must, subject to certain exceptions, be satisfied that it is of a pattern certified or sanctioned by the Board of Trade and that it complies with the regulations which relate to such

and of such accommodation for the loading or unloading of vehicles, or picking up or setting down of passengers or the fuelling of vehicles as may be specified, unless they are satisfied that the character of the new building is not likely to cause increased vehicular traffic along any road adjacent thereto or that satisfactory arrangements have been or will be made for limiting interference with traffic. Before making such a requirement the local authority must consult the chief officer of police for the district and the highway authority where they themselves are not the highway authority. This section is made expressly applicable to petrol filling stations. It will be necessary for the planning authority in preparing their scheme, to consider to what extent Model Clause 53 should be excluded or modified in view of this section.

(i) Town and Country Planning Act, 1932, ss. 18, 18, 20; 25 Halsbury's Statutes 496, 492, 496.

(k) 20 Halsbury's Statutes 409.

(l) *Ibid.*, 418.

(m) Measuring Instruments (Liquid Fuel and Lubricating Oil) Regulations, 1929, dated March 22, 1929; S.R. & O., 1929, No. 183; Measuring Instruments (Liquid Fuel and Lubricating Oil) Additional Regulations, dated September 19, 1929; S.R. & O., 1929, No. 751; Measuring Instruments (Liquid Fuel and Lubricating Oil) Verification and Stamping Fees Amendment Order, 1935; S.R. & O., 1935, No. 446.

(n) The expression "measuring instrument" means any instrument used in trade for the measurement of liquid fuel or lubricating oil for sale in individual quantities not exceeding 20 gallons other than a simple independent measure to which the Weights and Measures Regulations, 1907; S.R. & O., 1907, No. 698, and any regulation amending the same apply.

(o) Measuring Instruments (Liquid Fuel and Lubricating Oil) Regulations, 1929, dated March 22, 1929; S.R. & O., 1929, No. 183; Sched., para. 5.

matters as the position, mode of delivery of contents and the construction of the apparatus (*p*).

It is the duty of the local authority (*q*) to arrange that at least once a year a visit is made to the premises of every trader where any measuring instrument is installed for the purpose of inspecting and testing of such instrument, to arrange for special surprise visits from time to time (*r*) and to provide local standards for the purpose of comparison of all measuring instruments in use in their area (*s*).

An inspector of weights and measures may, if authorised by a justice of the peace—and every justice of the peace may at all reasonable times—inspect all measuring instruments within his jurisdiction used or in the possession of any person or on any premises for use for trade for the purpose of examining and testing such instruments and seizing and detaining them in appropriate cases. Provision is also made for the payment of fees in respect of the verification or stamping of measuring instruments (*t*) and for penalties to ensure the protection of the public against false measure (*u*). [504]

London.—The local authorities for the purpose of amenity bye-laws under the Petroleum (Consolidation) Act, 1928, are the L.C.C. and City corporation (*a*). The L.C.C. (General Powers) Act, 1938 (*b*), prohibits the establishment of a petroleum filling station adjacent to or communicating with any street without the consent of the City corporation as regards the City or the L.C.C. as regards the rest of the county. The local authority may attach to their consent conditions in relation to the lay-out, approach, egress and other matters relative to the prevention of obstruction to traffic. Appeal against refusal of consent or against conditions may be made to a court of summary jurisdiction. The local authority before giving or refusing consent must consult the Commissioner of Police and the appropriate metropolitan borough council. (See also title PETROLEUM.) [505]

(*p*) Measuring Instruments (Liquid Fuel and Lubricating Oil) Regulations, 1929, dated March 22, 1929; S.R. & O., 1929, No. 183, Reg. 9. See Weights and Measures Act, 1904, s. 6; 20 Halsbury's Statutes 410, as to power of Board of Trade to grant certificates of suitability.

(*q*) For definition of local authority, see Weights and Measures Act, 1878, s. 50; 20 Halsbury's Statutes 382.

(*r*) Measuring Instruments (Liquid Fuel and Lubricating Oil) Regulations, 1929, dated March 22, 1929; S.R. & O., No. 183; Reg. 8.

(*s*) Measuring Instruments (Liquid Fuel and Lubricating Oil) Regulations, 1929, dated March 22, 1929; S.R. & O., No. 183, Sched., para. 5.

(*t*) Measuring Instruments (Liquid Fuel and Lubricating Oil) Verification and Stamping Fees Amendment Order, 1935; S.R. & O., 1935, No. 446.

(*u*) Measuring Instruments (Liquid Fuel and Lubricating Oil) Regulations, 1929, dated March 22, 1929, Sched. I.

(*a*) S. 11; 18 Halsbury's Statutes 1176.

(*b*) S. 69; 26 Halsbury's Statutes 598.

PETROLEUM

	PAGE		PAGE
INTRODUCTORY - - -	196	Bye-Laws for Harbours - -	200
OWNERSHIP AND PRODUCTION - - -	197	SAFETY MEASURES - - -	200
STORAGE - - -	197	ACCIDENTS - - -	200
Licences - - -	197	INSPECTION - - -	200
Labelling of Petroleum Spirit Containers - - -	198	OTHER SUBSTANCES SUBJECT TO THE ACT - - -	201
CONVEYANCE - - -	199	PETROLEUM IN SEWERS - -	201
Transport by Road - - -	199	OIL IN NAVIGABLE WATERS - -	202
Transport by Sea - - -	199	LONDON - - -	202
Canal Bye-Laws - - -	199		

See also titles :

CARBIDE OF CALCIUM;
EXPLOSIVES;

PETROL FILLING STATIONS;
STREET TRADING.

Introductory.—For the purposes of this title the definitions given in the Petroleum (Consolidation) Act, 1928 (*a*), apply (except where otherwise stated):

“Petroleum” includes crude petroleum, oil made from petroleum or from coal, shale, peat or other bituminous substances, and other products of petroleum.

“Petroleum Spirit” means such petroleum as, when tested in the manner set forth in Part II. of the Second Schedule to the Act, gives off an inflammable vapour at a temperature of less than 78 degrees Fahrenheit (*b*).

“Oil” for the purposes of the Oil in Navigable Waters Act, 1922 (*c*), means oil of any description and includes spirit produced from oil and oil mixed with water. [506]

Although the law was consolidated in the Petroleum (Consolidation) Act, 1928, there have been later Acts, and some earlier Acts still need to be considered (*d*).

Numerous Statutory Rules and Orders have also been made (*e*).
[507]

- (*a*) 13 Halsbury's Statutes 1170.
- (*b*) Petroleum (Consolidation) Act, 1928, s. 23; *ibid.*, 1185.
- (*c*) See s. 8 (1); 12 Halsbury's Statutes 807.
- (*d*) The Petroleum (Transfer of Licences) Act, 1936; 27 Halsbury's Statutes 442; the Petroleum (Production) Act, 1934; 27 Halsbury's Statutes 442; the Oil in Navigable Waters Act, 1922; 18 Halsbury's Statutes 804; and the sections quoted of the following Acts: the Metalliferous Mines Regulation Act, 1872, ss. 14, 19; 12 Halsbury's Statutes 24, 26; the Coal Mines Act, 1911, ss. 20, 21; the Mines (Working Facilities and Support) Act, 1928, Part I.; *ibid.*, 181; the Mining Industry Act, 1936, s. 23; *ibid.*, 205; the Government War Obligations Act, 1919, s. 1 (2); 10 Halsbury's Statutes 848; the P.H.A., 1936, s. 27; 29 Halsbury's Statutes 847; the P.H. (London) Act, 1936, s. 62; 26 Geo. 5 & 1 Edw. 8, c. 50.

- (*e*) The most important to which to refer are the Bisulphide of Carbon Order in Council of November 5, 1926 (No. 1422 of 1926); the Petroleum and Liquid Products (Marks) Regulations (No. 482 of 1927); the Petroleum Spirit (Motor Vehicles) Regulations (No. 952 of 1929); the Petroleum (Carbide of Calcium) Order (No. 992 of 1920); the Petroleum (Mixtures) Regulations (No. 993 of 1929); the

Ownership and Production.—The Petroleum (Production) Act, 1934 (*f*), vested in the King the ownership of all petroleum existing in natural condition in Great Britain (*g*).

Licences for prospecting for and getting natural petroleum in Great Britain are to be obtained from the Board of Trade, and powers are given to the Railway and Canal Commission to grant powers of compulsory acquisition and ancillary rights to work as provided for Mines under Part I. of the Mines (Working Facilities and Support) Act, 1928 (*h*). Local authorities have to be consulted and have the same powers of objection as under that Act, notably if the rights granted include the laying and maintenance of pipes under a highway (*i*). [508]

The Railway and Canal Commission are directed, in examining applications for compulsory powers, to have regard "to the effect on the amenities of the locality of their proposed use and occupation of the land in respect of which the right is applied for" (*k*).

Holders of prospecting or mining licences under the Act, when getting natural gas in pursuance of their operations, may be authorised by the Board of Trade to supply natural gas to any premises requiring the same, provided that if the premises are within the area of supply of an authorised gas undertaking, natural gas shall not be supplied unless the Board of Trade are satisfied that the gas undertaking have afforded the owners of the premises an opportunity of obtaining gas at a reasonable price, and that natural gas shall be used on the premises in question for industrial purposes only (*l*). [509]

Storage.—Safety measures in connection with conveyance, storage and handling of petroleum are now to be found in the Petroleum (Consolidation) Act, 1928 (*m*). The Act, whilst maintaining in the definitions the difference between petroleum and petroleum spirit established by former legislation, applies, with regard to its safeguarding provisions, only to the latter. [510]

Licences.—Petroleum spirit must not be kept without a licence, unless it is kept in separate glass, earthenware or metal vessels securely stopped and containing not more than one pint each and unless the

Petroleum (Compressed Gases) Regulations (No. 34 of 1930); the Gas Cylinders (Conveyance) Regulations (No. 079 of 1931); the Petroleum Spirit (Conveyance) Regulations, S.R. & O., No. 1052 of 1932; the Petroleum Oils (Excise) Regulations, S.R. & O., No. 406 of 1932; the Petroleum (Production) Regulations, S.R. & O., No. 426 of 1935; the Petroleum (Bisulphide of Carbon Conveyance) Regulations, S.R. & O., No. 588 of 1935.

(*f*) S. 1 (1); 27 Halsbury's Statutes 443.

(*g*) For the purposes of the Act, "petroleum" includes "any mineral oil or relative hydro-carbon and natural gas existing in its natural condition in strata, but does not include coal or bituminous shales or other stratified deposits from which oil can be extracted by destructive distillation."

The Act therefore does not affect petroleum obtained by the Scottish shale oil processes or processes for the extraction of oil from coal by distillation. It also preserves the right of persons who, at the time of its passing, were using natural gas for any commercial purpose to continue to use the gas for that purpose.

(*h*) 18 Halsbury's Statutes 181.

(*i*) Petroleum (Production) Act, 1934, s. 3 (1) (b); 27 Halsbury's Statutes 443, incorporating ss. 19 to 28 and 30 to 34 of the Waterworks Clauses Act, 1847; 20 Halsbury's Statutes 193—198.

(*j*) Petroleum (Production) Act, 1934, s. 3 (2) (a); 27 Halsbury's Statutes 444.

(*l*) *Ibid.*, s. 4.

(*m*) 18 Halsbury's Statutes 1170, replacing the Petroleum Acts, 1871, 1879 and 1926; the Petroleum (Hawkers) Act, 1881, and the Petroleum (Amendment) Act, 1928.

aggregate amount so kept would not, if in bulk, exceed three gallons. The occupier of any premises upon which petroleum spirit is kept without a licence, in conditions or in quantities other than those indicated, is liable on summary conviction to a fine not exceeding £20 for every day on which the contravention occurs or continues, and the spirit and vessels may be ordered to be forfeited or otherwise disposed of. Spirit kept under licence must be kept in accordance with the conditions, if any, attached to the licence, and contravention of those conditions is punishable on summary conviction by a fine not exceeding £20 per day on which contravention occurs or continues (n). [511]

The granting of petroleum spirit licences is entrusted to the local authority, which means (a) in the County of London except the City, the L.C.C.; (b) in the City of London, the Common Council of the City; (c) elsewhere, the district council.

The L.C.C. Petroleum Licences Regulations provide that, before granting a licence for the storage of petroleum spirit in bulk exceeding 10,000 gallons, the L.C.C. shall advise the council of the metropolitan borough in which it is proposed to store the spirit (o). [512]

In a harbour under the control of a harbour authority, the harbour authority is the authority for granting petroleum spirit licences to the exclusion of any other local authority (p). [513]

The licensing authority has power to grant licences for such time and subject to such provisions as regards renewal as it may think necessary (q). [514]

The authority may attach conditions as regards mode of storage; nature and situation of premises; nature of goods with which petroleum spirit is stored; facilities for testing; and generally as to safe keeping (r). There is a right of appeal to the Secretary of State under sect. 8 of the Act. [515]

When conditions are attached which are to be observed by employees a copy of these conditions is to be posted up on the premises in such form and position as to be easily read by employees. Failure to post up notices as aforesaid, or defacement of such notices when posted up, is punishable on summary conviction by a fine not exceeding £5, and any employee contravening the requirements of the notice is also liable to a similar fine (s). [516]

Fees for licences may be taken according to a graduated scale ranging from 5s. for quantities not exceeding 100 gallons to £5 for quantities in excess of 50,000 gallons (t). [517]

The Petroleum (Transfer of Licences) Act, 1926 (u), empowers local authorities and the Secretary of State to transfer licences granted by them or him. The fee for transfer is fixed by the Act at 2s. 6d. The Act "shall have effect and shall be deemed always to have had effect as if the foregoing provisions had been contained in the (principal) Act as originally enacted" (v). [518]

Labelling of Petroleum Spirit Containers.—All vessels containing petroleum spirit, whether in storage or being transported, or sold or

(n) Petroleum (Consolidation) Act, 1923, s. 1.

(o) Regulation G.410.

(p) Petroleum (Consolidation) Act, 1923, s. 2 (1); 18 Halsbury's Statutes 1171.

(q) *Ibid.*, s. 2 (2).

(r) *Ibid.*, s. 2 (3).

(s) *Ibid.*, s. 2 (4).

(t) *Ibid.*, s. 4 and Sched. I.

(u) 29 Halsbury's Statutes 307.

(v) Petroleum (Transfer of Licences) Act, 1926, s. 1 (3).

exposed or offered for sale, must bear a label showing in conspicuous characters the words "Petroleum Spirit" and the words "Highly Inflammable." In addition, if the spirit is stored, the name and address of the owner or consignee must be shown; if the spirit is sent or conveyed, the name and address of the sender; and if the spirit is sold, or exposed or offered for sale, the name and address of the vendor. Contravention is punishable on summary conviction by a fine not exceeding £5, and the spirit and containers may be forfeited or otherwise dealt with as the court may order (a).

Petroleum spirit carried on a motor vehicle, ship or aircraft, intended to be used only for the purposes thereof shall not be deemed to be conveyed, and petroleum spirit imported shall not be deemed to be "kept" during the seven days next after it has been imported (a).

Sect. 1 of the Merchandise Marks Act, 1926 (b), as to indication of origin on certain foreign products, has been excluded from applying to petroleum or to liquid products thereof (c). [519]

Conveyance. *Transport by Road.*—Sect. 6 of the Act of 1928 enabled the Secretary of State to make regulations for the transport of petroleum spirit by road, infringements being made punishable on summary conviction by a fine not exceeding £20 for every day on which the offence occurs or continues, the spirit and any vessel in which it is contained being liable in addition to be forfeited or otherwise dealt with as the court may direct (d).

Any local authority empowered under the Act to grant licences for petroleum spirit is entrusted by sect. 6 (1) (g), with the enforcement of the regulations within the limits of its jurisdiction, and the authorised officers of such authority must be provided by owners of vehicles or their employees with all reasonable facilities for the purpose of ascertaining that the regulations are complied with. [520]

Transport by Sea.—Harbour authorities are entrusted with the duty of making bye-laws in respect of ships carrying petroleum spirit and of the loading and unloading of petroleum spirit within the harbour, providing for the places at which ships are to load or to land petroleum spirit; the time for and mode of such operations; the precautions to be taken in connection therewith; and the places at which ships carrying petroleum spirit are to be moored. The bye-laws require approval by the Minister of Transport, who may himself make such bye-laws if the harbour authority does not do so (e). [521]

Canal Bye-Laws.—Canal companies are also empowered to make bye-laws concerning the loading, conveyance and landing of petroleum

(a) Petroleum (Consolidation) Act, 1928, s. 5; 13 Halsbury's Statutes 1173.

(b) 19 Halsbury's Statutes 898.

(c) S.R. & O., No. 432 of 1927.

(d) See "Petroleum Spirit (Conveyance) Regulations," S.R. & O., No. 1052 of 1932. Among numerous and detailed requirements of these regulations, there may be mentioned those forbidding conveyance of petroleum spirit on any public vehicle whilst carrying passengers, and forbidding passengers to remain in a public vehicle during replenishment of the fuel tank from a wagon carrying petroleum spirit in bulk, or such re-fuelling on the highway.

The regulations do not apply to the conveyance of petroleum spirit on any vehicle for use only in the propulsion of that vehicle, nor on any vehicle (not being a tank wagon, or a public passenger-carrying vehicle, or a petroleum hawking vehicle) in a quantity not exceeding 30 gallons in securely closed containers of a capacity not exceeding two gallons each, or in securely closed metal cans or drums of a capacity not exceeding ten gallons, or in a quantity not exceeding fifty gallons if contained in a single securely closed steel barrel.

(e) Petroleum (Consolidation) Act, 1928, s. 7; 13 Halsbury's Statutes 1174.

spirit within their jurisdiction, such bye-laws being subject to confirmation by the Minister of Transport (*f*). [522]

Bye-Laws for Harbours.—For the assistance of harbour authorities, some of which are local authorities, the Minister of Transport issued, in 1924, a set of model bye-laws under the Petroleum (Consolidation) Act, 1928.

The bye-laws made by the leading harbour authorities embody most of the provisions of the model series, and contain also special local provisions. Reference may be made to the bye-laws of the Port of London Authority, the Mersey Docks and Harbour Board, the Tyne Improvement Commissioners, etc. [523]

Safety Measures.—Sect. 10 of the Petroleum (Consolidation) Act, 1928 (*g*), enables the Secretary of State to make regulations as to the keeping and use of petroleum spirit by persons intending to use it for motor vehicles, motor boats, aircraft or other engines specified in the regulations and not for trade purposes. These regulations (*h*) require notice to be given to the local authority and repeated annually in the month of January if the spirit is kept in containers of a capacity exceeding two gallons each. [524]

Sect. 12 of the Act (*i*) enables the Secretary of State to make special regulations, in consultation with the Minister of Health, with regard to any class of petroleum spirit which, by reason of its nature or of any substance mixed with it, is likely to be injurious to health, and in particular in regard to precautions in handling or using such spirit in any trade or business; to warning purchasers as to dangers and precautions; to prohibiting the sale or use of spirit so dangerous or injurious that precautions are considered to be impracticable. Contraventions of these regulations are to be punishable on summary conviction by a fine not exceeding £20 for every day on which the offence occurs or continues, the court being at liberty to order the spirit and vessels to be forfeited or otherwise dealt with. No regulations have been issued so far under this section. [525]

Accidents.—Accidents occasioning loss of life or personal injury by explosion or fire in connection with any premises licensed for petroleum spirit must be reported forthwith to the Secretary of State by the occupier of the premises, but that notice need not be sent to any inspector of factories (*k*). By sect. 14 the Secretary of State may direct an inquiry into the cause of any such accident. Detailed rules are laid down for such inquiries. [526]

Inspection.—Sects. 16 and 17 (*l*) lay down the powers of inspection for the purpose of ascertaining compliance with the Act and regulations. These powers may be exercised by Government inspectors and by officers of the licensing authority. The powers specially conferred on government officers are: (a) to enter and inspect all licensed premises or premises in which petroleum spirit is suspected to be kept in contravention of requirements; (b) to take samples "of any petroleum"—not merely of petroleum spirit—on the premises; (c) to be

(*f*) Petroleum (Consolidation) Act, 1928, s. 9.

(*g*) 18 Halsbury's Statutes 1176.

(*h*) Petroleum Spirit (Motor Vehicles) Regulations, S.R. & O., No. 952 of 1929.

(*i*) Petroleum (Consolidation) Act, 1928; 18 Halsbury's Statutes 1178.

(*j*) *Ibid.*, s. 13.

(*k*) *Ibid.*, pp. 1181, 1182.

provided with all means necessary for inspection or taking samples ; (d) to lodge complaint in case of interference or obstruction, the penalty for which is not to exceed £50 on summary conviction or £100 on conviction on indictment. [527]

The powers of representatives of local authorities are confined to : (a) the purchase of samples of "any petroleum" from any dealer in petroleum (as distinct from petroleum spirit) or from any person keeping petroleum for purposes of trade or industry ; (b) the right to be shown any vessels in which petroleum is kept on the premises and take samples therefrom against payment ; (c) the right to test or cause to be tested any samples obtained.

Notice of time and place of testing must be given to the dealer or other person from whom the sample was taken. Interference with or obstruction of representatives of local authorities is punishable by a fine not exceeding £20 on summary conviction and the cost of testing may be recovered from an owner or dealer in contravention. In other cases, the local authority have to pay the expense of action by their officers. [528]

In addition to the power given to government inspectors of entering, inspecting and examining premises in which petroleum spirit is suspected to be kept in contravention of the Act or regulations, power is given to a court of summary jurisdiction to grant search warrants to any person named therein, thereby enabling the local authority, in the absence of a government inspector, to enter and search any place, ship or vehicle named in the warrant and to take samples of "any petroleum" therein. [529]

Other Substances Subject to the Act.—Sect. 19 of the Petroleum (Consolidation) Act, 1928, provides that the provisions of the Act may be applied by Order in Council (*m*) to other substances and that, subject to modifications or reservations in the order, the Act shall have effect as if the substance was included in the definition of petroleum spirit under the Act. [530]

Petroleum in Sewers.—Warning is repeated, in most of the regulations relating to petroleum spirit and substances assimilated thereto, as to the danger of allowing any such petroleum spirit or substance to flow or to be otherwise dropped into sewers, and such proceeding is forbidden. The powers of local authorities in this matter depend upon the P.H.As.

Sect. 27 of the P.H.A., 1936 (*n*), prohibits throwing, emptying or turning or suffering or permitting to be thrown or emptied or to pass into any public sewer, or into any drain or sewer communicating with a public sewer, any petroleum spirit or carbide of calcium, under penalty of a fine not exceeding £10 and of a further fine not exceeding £5 for each day on which the offence continues after conviction. For the

(*m*) The following Orders in Council have been issued under this section or earlier similar powers consolidated in the Act of 1928, applying the Act wholly or in part : 1926 (November 5), Bisulphide of Carbon Conveyed by Road (S.R. & O., No. 1422—1926) ; 1929 (November 5), Petroleum (Carbide of Calcium) Order (S.R. & O., No. 992—1929) ; 1929 (November 5), Petroleum (Mixtures) Order (S.R. & O., No. 993—1929) ; 1930 (January 20), Petroleum (Compressed Gases) Order (S.R. & O., No. 84—1930).

These have been implemented by regulations under s. 6 of the Act (see *ante*, under "Conveyance") as follows : Bisulphide of Carbon (Conveyance) Regulations (S.R. & O., No. 582—1935) ; the Gas Cylinders (Conveyance) Regulations, 1931 (S.R. & O., No. 689—1931).

(*n*) 29 Halsbury's Statutes 347.

purpose of the section, "petroleum spirit" is defined as any crude petroleum, or oil made from petroleum or from coal, shale, peat or other bituminous substances, or any product of petroleum or mixture containing petroleum, which, when tested in accordance with the Petroleum (Consolidation) Act, 1928, gives off an inflammable vapour at less than 78 degrees Fahrenheit. [581]

Oil in Navigable Waters.—Closely connected with the administration of the Petroleum (Consolidation) Act, 1928, and regulations thereunder is the administration of the Oil in Navigable Waters Act, 1922. This Act does not merely apply to petroleum and petroleum spirit but to oil of any description, including spirit produced from oil and oil mixed with water (o). Local authorities have, however, little to do with the administration of the Act, prosecutions under which can only be instituted, as regards offences in a harbour, by the harbour authority, and in other cases by a person authorised in that behalf by special or general directions of the Board of Trade or of the Minister of Agriculture and Fisheries (p). It is only in cases where the local authority are themselves the harbour authority or have been appointed by the Board of Trade or the M. of A. & F. as "the person authorised" to take proceedings under the Act, that they can do so. Certain powers of the Board of Trade to have premises inspected arise, however, upon representation by local authorities (q). [582]

By a general direction of the Minister of Agriculture and Fisheries (r), proceedings under the Act are authorised to be taken by any local Fisheries Committee under the Sea Fisheries Regulation Act, 1888, or by any Board of Conservators under the Salmon and Freshwater Fisheries Acts.

The Act applies to the territorial waters of Great Britain and Northern Ireland and the waters of harbours therein (s), and sect. 1 of the Act makes it an offence to discharge oil or allow it to escape into those waters, from a vessel, from a place on land, or while transferring oil between a vessel and the shore. The prohibition is by sect. 1 (1) made subject to the defence that the escape of oil was due to, or that it was necessary to discharge the oil by reason of, collision or the happening to a vessel of some damage or accident, and also, if the proceedings are in respect of an escape of oil, that all reasonable means were taken by the person charged to prevent the escape (t). [583]

London.—The local authorities for the purpose of licensing under the Petroleum (Consolidation) Act, 1928, are the L.C.C. and the City Corporation (u). The various types of licences, and the special conditions upon which the particular licences are granted are too elaborate

(o) Oil in Navigable Waters Act, 1922, s. 8 (1); 18 Halsbury's Statutes 807.

(p) *Ibid.*, s. 7 (2).

(q) *Ibid.*, s. 6.

(r) S.R. & O., No. 229 of 1928.

(s) Oil in Navigable Waters Act, 1922, s. 8 (3).

(t) The meaning of the proviso was discussed in *The Pass of Leny* ("Dock and Harbour Authority," April, 1937), a case which arose out of a fire and destruction of craft in Poole harbour, in September, 1936, in consequence of an escape of petroleum spirit alleged to have come from the tanker whilst discharging. The case of *The Pass of Leny* came later before the P.D. & A. Division in an action for damages brought by the owners of craft injured (*Walter Pender and Ors. v. Bulk Oil S.S. Co., Ltd.* (1937), 58 Lloyd L.R. 65), but the abbreviated report contains no reference to the previous proceedings at Poole. (*The Times*, April 24, 1937.)

(u) S. 2; 18 Halsbury's Statutes 1171.

to reproduce here, but will repay perusal by authorities faced with problems of ensuring safety and mitigating nuisance in populous centres (*x*). The Port of London Authority also has licensing powers as harbour authority (*a*).

The London Building Act, 1930, Part XI. (*b*), contains provisions as to dangerous and noxious businesses, but the provisions do not apply to premises licensed under the Petroleum (Consolidation) Act, 1928. Sect. 99 of the Act of 1930 contains provisions as to use of living rooms and workshops over or communicating directly with premises used for storing petroleum, etc. (see title LONDON BUILDING). [534]

The L.C.C. (General Powers) Act, 1912, Part II. (*c*), prohibits the use or establishment of a petroleum oil depot unless the depot is registered with the City Corporation as regards the City or the L.C.C. as regards the rest of the county.

By virtue of sect. 6 of that Act the L.C.C. issued, under date October 13, 1914, regulations as to the requirements to be complied with at premises intended to be used, in the County of London outside the City, for the storage of what the regulations call "Petroleum Oil" (*d*).

"Petroleum oil depot" means any premises in which petroleum or other inflammable oils are stored above the ground in not less than the following quantities: 5,000 gallons where tanks only are used; 2,000 gallons in other premises. The Act confers power of entry and power to charge fees for registration. Premises within the Port of London belonging to or occupied by the Authority are exempt. [535]

Sect. 62 of the P.H. (London) Act, 1936 (*e*), provides a penalty not exceeding £20, and a further fine of £5 for every day on which the offence continues, for allowing petroleum or petroleum spirit, etc., to enter the L.C.C. sewers or any sewer or drain communicating therewith. This prohibition does not merely cover, as in the country, petroleum spirit and mixtures inflammable at less than 78 degrees Fahrenheit, but also extends to "petroleum," i.e. "crude petroleum or any oil made from petroleum, or from coal, shale, peat or other bituminous substances (*f*) . . .". The L.C.C. is prohibited from taking proceedings against the corporations of Croydon and West Ham by reason only of their being owners of a sewer or drain by which any petroleum, petroleum spirit or carbide of calcium enters an L.C.C. sewer (*g*). [536]

(*x*) See L.C.C. Regulations, 1936, No. 3210, pp. 145—159.

(*a*) Petroleum (Consolidation) Act, 1928, s. 2; 13 Halsbury's Statutes 1171.

(*b*) 28 Halsbury's Statutes 292 *et seq.*

(*c*) 11 Halsbury's Statutes 1816.

(*d*) No. 2835, approved by the Home Secretary, October 13, 1914.

(*e*) 26 Geo. 5 & 1 Edw. 8, c. 50.

(*f*) *Ibid.*, s. 62 (6).

(*g*) *Ibid.*, s. 62 (5).

PETTY SESSIONAL COURT HOUSE

See OFFICIAL BUILDINGS.

PHYSICAL TRAINING

See RECREATION AND PHYSICAL TRAINING.

PIERS

PAGE	PAGE		
INTRODUCTORY - - - - -	204	PIERS CONSTRUCTED OR ACQUIRED BY LOCAL AUTHORITY UNDER LOCAL ACTS - - - - -	207
CONSTRUCTION OF PIERS. PRE- LIMINARY CONSIDERATIONS - - -	204	HARBOURS, DOCKS AND PIERS CLAUSES ACT, 1847 - - - - -	208
POWERS OF A LOCAL AUTHORITY TO CONSTRUCT OR ACQUIRE PIERS	205	BYE-LAWS - - - - -	208
PIERS CONSTRUCTED OR ACQUIRED BY LOCAL AUTHORITY UNDER PROVISIONAL ORDERS - - - - -	205	LONDON - - - - -	209

See also titles :

HARBOURS ;
MINISTRY OF TRANSPORT ;
PRIVATE ACT ;
PROVISIONAL ORDERS ;

RATING OF SPECIAL PROPERTIES ;
ROADS CLASSIFICATION ;
SEASHORE.

Introductory.—Piers which cater for the entertainment and recreation of visitors are to be found at most seaside resorts. It is to the functions of local authorities in connection with piers of this type that this article is confined. Most of these piers were originally constructed by private enterprise, with the object (mainly if not wholly) of earning dividends, but in practice few piers turned out to be sound financial investments, owing to the heavy cost not only of their construction but also of their maintenance. Some undertakings passed into the hands of railway companies, who thought to enhance their traffic returns by developing the coastal resorts to which their railways gave access. Other piers became vested in local authorities, who foresaw that, if the piers were to remain in the hands of undertakers, who through lack of funds could not keep their property up to the standard which the local authority desired to maintain, it would reflect upon the reputation of the town as a whole. In recent years railway companies have shown reluctance to retain the control and management of their piers, and have in some cases concluded agreements for transferring their interests to the local authority. [587]

Construction of Piers. Preliminary Considerations.—In contemplating the construction of a pier, the first point to be considered is the ownership of the site upon which it is to be constructed. So much of the seashore as is above highwater mark is presumed to belong to the owner of the adjoining land (a). There is no such presumption in the case of the foreshore, that is to say, the land between the high and low water marks (b). Such land is *prima facie* Crown property of common right (c), although by express or implied grant it may have

(a) *Lowe v. Govett* (1832), 1 L. J. (K. B.) 224; 44 Digest 71, 527.

(b) *Webber v. Richards* (1844), 2 L. T. (o. s.) 420; 44 Digest 72, 528. See title SEASHORE.

(c) *Bulstrode v. Hall* (1668), 1 Keb. 532; 44 Digest 70, 511.

been transferred to another owner, most often the lord of a manor. Beyond low water mark the shore is (as between Crown and subject) the property of the Crown, and without express title (see below) no right over it can be exercised or acquired. It has been held (*d*) that where a pier was constructed on piles driven into the sand so that the water flowed under it, that part of the pier which was beyond low water mark was not annexed to a parish by sect. 27 of the Poor Law Amendment Act, 1868 (*e*), as being extra-parochial, but was beyond the realm, nor is it an accretion from the sea. On the other hand where a pier is built on a solid foundation so that the sea cannot flow under it, the land on which it stands is to be regarded as an accretion from the sea within the meaning of the said section. Frequently, piers of the first-mentioned type of construction are brought within the jurisdiction of a local authority by means of a section in a private Act extending the maritime boundary of the parish for a specified distance seawards from the coastline. Examples of this are to be found in sect. 63 of the Lowestoft Corporation Act, 1901 (*f*), and sect. 5 of the Lowestoft Corporation Act, 1934 (*g*). [588]

Powers of a Local Authority to Construct or Acquire Piers.—There is no general statute authorising a local authority either to build or acquire a pier or to maintain one. As has already been indicated most piers were originally constructed by private enterprise, but there are exceptions. For instance, Wellington Pier at Great Yarmouth was built by the local authority under powers conferred upon them by a provisional order (*h*); and one of the piers at Bournemouth was constructed by the Bournemouth Commissioners under the provisions of the Bournemouth Improvement Act, 1856 (*i*). Where a local authority desire to take over an existing pier they invariably obtain authority for so doing either by provisional order or by private Act. More elastic powers can be acquired by the private Act procedure, and, therefore, although it is the more costly method, it has compensating advantages. A third and less satisfactory method by which a local authority may be authorised to acquire a pier is by legislation promoted at the instance of the pier owners. Thus where a railway company were transferring their pier undertaking to a local authority, it has been found practicable to insert, in a private Act promoted by the railway company, a clause authorising the company on the one hand and the local authority on the other hand to enter into and carry into effect contracts and agreements with respect to the lease, working, management, maintenance and repair of the pier in question (*k*). Procedure along these lines confers, however, no more than limited powers of maintenance and regulation upon the local authority to whom the pier is transferred. [589]

Piers Constructed or Acquired by Local Authority under Provisional Orders.—By the provisions of the General Pier and Harbour Act,

(*d*) *Blackpool Pier Co. and South Blackpool Jetty Co. v. Fylde Union Assessment Committee and Layton with Warbreck Township Overseers* (1877), 46 L. J. (M. C.) 189; 38 Digest 512, 663.

(*e*) 10 Halsbury's Statutes 558.

(*f*) 1 Edw. 7, c. cclxv.

(*g*) 24 & 25 Geo. 5, c. lxxv.

(*h*) Pier and Harbour Orders Confirmation (No. 2) Act, 1901 (1 Edw. 7, c. clx.).

(*i*) 19 & 20 Vict. c. xc.

(*k*) See Southern Railway Act, 1925 (15 & 16 Geo. 5, c. 1), s. 58.

1861 (*l*), the Board of Trade were given power to issue provisional orders authorising the construction of works, which term was defined to include any pier, or the levying of rates at any existing or new works. The Act does not apply in any case where the estimated expenditure upon any proposed works exceeds £100,000. The powers of the Board of Trade with regard to piers were transferred to the Minister of Transport by the M. of T. Act, 1919 (*m*). Sect. 17 of the last-mentioned Act empowered the Minister, subject to the approval of the Treasury, to make advances, either by way of grant or by way of loan, or partly in one way and partly in another, for the construction, improvement, or maintenance of piers. A previous power of the Treasury on the recommendation of the Development Commissioners to make advances for such purposes was determined. [*540*]

Where a provisional order under the Act of 1861 authorises the raising of a loan for the construction of a pier by a public body, the rating authority may be empowered under sect. 7 of the Public Works Loans Act, 1882 (*n*), by that order or by any other order to charge any fund or rate under their control for the purpose of aiding the raising of a loan or any part thereof from the Public Works Loan Commissioners, and to give such aid by guaranteeing the principal and interest of the loan or by borrowing the sum required and advancing it to the public body, or partly in one way and partly in the other, or otherwise in manner provided by the order. By the expression "public body" is meant any rating authority and also any commissioners or trustees or other body or persons who manage or undertake the works without any view to the payment of any dividend or profits out of the revenue from such works, and for the purposes of this Act as amended by the Public Works Loans Act, 1887 (*o*), and the expression "rating authority" includes county councils (*p*) and the councils of county districts.

By sect. 19 of the General Pier and Harbour Act, 1861, Amendment Act, 1862 (*q*), the Harbours, Docks and Piers Clauses Act, 1847 (*r*), is deemed to be incorporated with every provisional order. [*541*]

A memorandum on provisional orders relating to piers and harbours has been issued by the M. of T., and copies thereof can be obtained on application to the secretarial department. This memorandum contains model clauses for insertion in provisional orders.

By a provisional order a local authority may obtain powers either to purchase a pier outright, or to acquire it on lease. In some cases a purchase agreement is scheduled to and confirmed by the order as upon the sale of the Worthing pier to the local authority by the Worthing Pier Co., Ltd. This purchase was effected under the Worthing Pier Order, 1920, which was confirmed by the Pier and Harbour Orders Confirmation (No. 3) Act, 1920 (*s*). In other cases the order itself passes the estate and interest of the proprietors of the pier to the local authority, and provides that for the purpose of completing the title of the local authority to the property and rights thereby transferred to them, the order is to be deemed a conveyance by the proprietors to the local authority as on the date of transfer. The Deal Pier Order,

(*l*) 18 Halsbury's Statutes 101.

(*m*) 8 Halsbury's Statutes 422; and see S.R. & O., 1919, No. 1440.

(*n*) 12 Halsbury's Statutes 279.

(*o*) *Ibid.*, 291.

(*p*) *Vide* footnote on page last cited.

(*q*) 18 Halsbury's Statutes 110.

(*r*) *Ibid.*, 48.

(*s*) 10 & 11 Geo. 5, c. clxvi.

1920, was framed on these lines and was confirmed by the Pier and Harbour Orders Confirmation (No. 2) Act, 1920 (*t*). [542]

The powers generally conferred upon the local authority under a provisional order include power to maintain and improve the pier, power to dredge the foreshore and bed of the sea to such extent as may be necessary to secure a sufficient waterway and approach to the pier head for vessels using it, power to lease or sell the undertaking with the previous consent of the Minister of Transport, power to levy charges for persons using the pier, and a general power to furnish, stock and equip upon the pier fishing platforms, pavilions, refreshment and other rooms, galleries, saloons, arcades, kiosks, shops, bazaars, aquaria, shelters, winter gardens, automatic machines, bandstands, lavatories and other conveniences, open or covered sea-water swimming and other bathing places, and cabins, and to make charges for the use thereof or for admission thereto. [543]

Piers Constructed or Acquired by Local Authority under Local Acts.—As has been previously mentioned powers to construct, purchase or lease a pier may also be obtained by a local authority under a private Act. For an example of a purchase of a pier by a local authority in this manner, reference may be made to the Wallasey Corporation Act, 1927 (*u*). By this Act the New Brighton pier was transferred from the New Brighton Pier Co. to the local authority, and the local authority were authorised to repair, maintain, alter and improve the pier and all necessary buildings, roads, approaches, offices, etc. The Act in addition to authorising the local authority to erect and maintain pavilions, shelters, kiosks and other amenities usually to be found on a pier gave the local authority power to contribute to entertainments, to advertise the pier, and to sell or lease it with the sanction of the Minister of Transport. [544]

The Lowestoft Corporation Act, 1934 (*a*), affords an example where a local authority has obtained statutory powers to lease a pier from a railway company. The lease has been scheduled to the Act by which it is confirmed and has been made binding upon the local authority and the company. The lease runs for a period of forty-two years subject to a proviso that the corporation may after due notice terminate the lease either at the end of the third or of the twenty-first year of the term. After the expiration of the scheduled lease, the local authority and the company are empowered to enter into and to carry into effect contracts and agreements with respect to the sale or lease by the company to the local authority of the pier or any part thereof, or of any works or conveniences provided thereon or in connection therewith, or with respect to the working management, maintenance and repair thereof respectively by the local authority. The local authority are invested with wide powers of managing and controlling the undertaking, of levying rates, of making charges for entertainments, of closing the pier during the winter months, of providing bands of music, concerts, sports or other entertainments on the pier or in the pavilions or other buildings thereon, and of subscribing towards the funds of any regatta or fête held in the vicinity of the pier. The Act also follows the practice invariably adopted in Acts of this nature of incorporating a number

(*t*) 10 & 11 Geo. 5, c. exxi.
(*a*) 24 & 25 Geo. 5, c. lxxv.

(*u*) 17 & 18 Geo. 5, c. cxxii.

of sections of the Harbours, Docks and Piers Clauses Act, 1847 (b).
[545]

Harbours, Docks and Piers Clauses Act, 1847.—This Act consolidated the provisions usually contained in Acts authorising the making and improving of harbours, docks and piers. Many of its provisions are inapplicable to piers of the type under consideration, but among the most important of the sections which by virtue of a provisional order or of a private Act are generally brought into operation are sect. 80, which gives the local authority power to vary their rates and charges from time to time, in such manner as they may deem expedient, subject to any limitations imposed by the order or Act; sect. 82, which gives powers to compound for tolls subject to the provision that preferential treatment shall not be given to any particular person or persons; sect. 47 which requires lists of rates and charges to be exhibited upon the pier; sect. 51, which authorises the appointment of a pier master; sects. 74 and 75 which make both the owner and the master of a vessel responsible for any damage done to a pier by such vessel or by any person employed about the same, and which provide that damage to the extent of £50 may be recovered summarily; sect. 79, which authorises the local authority to nominate persons to be appointed by the justices as special constables to perform duties in connection with the pier undertaking; sect. 80 which provides for the dismissal of such special constables; sect. 88 which authorises the making of bye-laws; sects. 88 to 90 which deal with the publication of bye-laws, and the proof of their having become operative; sect. 92 which incorporates the clauses of the Railways Clauses Consolidation Act, 1845 (c), with respect to the recovery of damages not specially provided for, and penalties; sect. 94 which provides that certain acts authorised or required to be done by two justices may and shall be done in England and Ireland by any one magistrate having by law authority to act alone, which meets the position in any case in which a stipendiary magistrate has been appointed; sects. 97 and 98 which require copies of the provisional order or private Act to be deposited for inspection; and sects. 99 to 108 which are saving clauses in favour of the Crown, the Admiralty and other Government departments, of the City of London and of Trinity House, etc. [546]

Bye-Laws.—Under provisional orders and also under private Acts incorporating sect. 88 of the Harbours, Docks and Piers Clauses Act, 1847 (d), the local authority are authorised to make bye-laws for regulating the use of a pier. This power is usually extended by clauses or sections authorising the local authority to make bye-laws: (i.) for securing good and orderly conduct during band performances, concerts, sports or other entertainments held on the pier; (ii.) for regulating the collection and levying of the rates or charges which the local authority are authorised to collect or levy; (iii.) for regulating the traffic on the pier; (iv.) for regulating the conditions of the use of any portion of the pier; (v.) for preventing injury to and protecting the pier and property thereon or attached thereto; (vi.) for regulating the conduct of persons frequenting the pier; and (vii.) for preserving order thereon. It is usual also to prescribe in the private Act or order the maximum penalties to be enforced in the case of breach or non-

(b) 18 Halsbury's Statutes 48.
(d) 18 Halsbury's Statutes 70.

(c) 14 Halsbury's Statutes 80.

observance of any of the bye-laws, and that no bye-law shall come into operation until it has been confirmed by the Minister of Transport.

[547]

London.—The L.C.C. obtained powers under the Thames River Steamboat Service Acts, 1904-8, to acquire and manage piers on the Thames for passenger vessels. Under the London Passenger Transport Act, 1933 (e), the council may enter into arrangements with the London Passenger Transport Board for the transfer to or use by the Board of any property acquired by the council for the purpose of the Acts of 1904-8. The Port of London (Consolidation) Act, 1920 (f), confers upon the Port of London Authority powers as to the construction, management, etc., of piers and landing places. By sect. 264 the Authority may make agreements with the L.C.C. for the acquisition of the council's powers with regard to piers. [548]

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- (e) S. 19 ; 26 Halsbury's Statutes 771.
(f) Ss. 257-264 ; 18 Halsbury's Statutes 676, 677.
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PIGS

See ANIMALS, KEEPING OF.

PIGSTY

See ANIMALS, KEEPING OF.

PILOTS

	PAGE	PAGE	
INTRODUCTORY — — —	200	OFFENCES BY PILOTS — — —	210
PILOTAGE AUTHORITIES — — —	210	LIMITATION OF LIABILITY OF PILOTS — — —	211
BYE-LAWS — — —	210		

See also title HARBOURS.

Introductory.—A pilot is defined by sect. 742 of the Merchant Shipping Act, 1894 (a), as any person not belonging to a ship who has the conduct thereof, and the law relating to pilots is now contained in the Pilotage Acts, 1913 and 1936 (b). Pilots are exempt from serving on juries (c). [549]

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- (a) 18 Halsbury's Statutes 411.
(b) *Ibid.*, 488 and 29 Halsbury's Statutes 792.
(c) Juries Act, 1870, s. 9 and Schedule ; 10 Halsbury's Statutes 73, 76.

Pilotage Authorities.—The Board of Trade have power under the Pilotage Act, 1913, to make pilotage orders which may provide for the rearrangement of pilotage districts and pilotage authorities, for the establishment of new pilotage districts and new pilotage authorities, and their incorporation, for accounts, for their procedure, for their making bye-laws, for compulsory pilotage, for the representation of pilots on the pilotage authority, and for other matters set out in sect. 7 (d). The same section lays down which orders shall and which shall not require confirmation by Parliament. Every pilotage district and pilotage authority which was in existence at the time of the passing of the Act is to continue as such until otherwise provided by a pilotage order (e). Apart from the Corporation of the Trinity House of Deptford Strand (f) the pilotage authorities consist mainly of harbour authorities, municipal corporations and other pilotage boards and commissions. A pilotage authority may license pilots for their district, and the licences must be in a form approved for the time being by the Board of Trade. The licence must be produced to the pilotage authority when required, and if it is revoked or suspended the pilot must deliver it to the authority. A pilotage authority may also grant certificates to any person who is *bona fide* the master or mate of any ship, if after examination they are satisfied, having regard to his skill, experience and local knowledge, that he is capable of piloting within their district the ship of which he is the master or mate. [550]

Bye-Laws.—By sect. 17 of the Pilotage Act, 1913 (g), a pilotage authority is given very extensive powers of making bye-laws with regard to the qualifications and general behaviour of pilots, and of masters and mates while holding pilotage certificates. *Inter alia*, the authority may by such bye-laws limit the number of pilots to be licensed, fix for the district the rates of payment to be made in respect of the services of a licensed pilot, and provide for a deduction being made from any sums received by pilots of any sums required for meeting the administrative expenses of the authority, or any contributions required for any fund established for the payment of pensions or other benefits to pilots, their widows or children. Such bye-laws may also require the owners of ships whose masters or mates hold pilotage certificates to contribute towards the pilot fund or account of the pilotage district, and require the holders of such certificates to make periodical returns of the pilotage services rendered by them. Bye-laws made under this section do not take effect unless submitted to the Board of Trade and confirmed by them with or without modification, and prior to such submission the bye-laws must be published in such manner as the Board of Trade direct. [551]

Offences by Pilots.—Sect. 46 and 48 of the Pilotage Act, 1913 (h), define a number of offences by which a pilot renders himself liable to punishment. Offences under sect. 46 are declared to be misdemeanors and are punishable under sect. 680 of the Merchant Shipping Act,

(d) 18 Halsbury's Statutes 400.

(e) S. 8, *ibid.*, 491. For instances of the exercise of the power of making pilotage orders, see p. 620 of Index to S.R. & O. in force (14th edition, 1938), published by H.M.S.O.

(f) For the full title of this corporation see the Merchant Shipping Act, 1894; 18 Halsbury's Statutes 412.

(g) 18 Halsbury's Statutes 494.

(h) *Ibid.*, 506, 507.

1894 (i). Offences under sect. 48 render the pilot liable to a fine of not exceeding one hundred pounds in addition to any liability for damages. The pilotage authority may suspend or revoke the licence of any pilot who is guilty of an offence under the Act or of any breach of their bye-laws or of any misconduct affecting his capability as a pilot. The licence may also be suspended or revoked if the pilot has failed in or neglected his duty or if he has become incompetent (k). In any such case the pilot may appeal against the decision of the pilotage authority to a judge of county courts or to a metropolitan police magistrate or stipendiary magistrate having jurisdiction within the port for which the pilot is licensed (l). [552]

Limitation of Liability of Pilotage Authorities.—By sect. 1 of the Pilotage Authorities (Limitation of Liability) Act, 1936 (m), a pilotage authority is not, where loss or damage has been caused without their actual fault or privity, liable to damages beyond the amount of £100 multiplied by the number of pilots holding licences from the authority. [553]

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- (i) 18 Halsbury's Statutes 393.
 (k) Pilotage Act, 1913, s. 26; 18 Halsbury's Statutes 500.
 (l) *Ibid.*, s. 28.
 (m) 29 Halsbury's Statutes 793.
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PIPES

See WATER SUPPLY.

PLAQUE

See INFECTIOUS DISEASES.

PLANS

PAGE	PAGE
POWERS TO REQUIRE THE DEPOSIT OF PLANS	
P.H.A., 1936 - - - - -	212
P.H.A., 1875 - - - - -	212
Town and Country Planning Act, 1932 - - - - -	213
Restriction of Ribbon Development Act, 1935 - - - - -	213
Local Acts - - - - -	213
SUBMISSION OF PLANS	
Building Bye-Laws - - - - -	214
Town Planning Interim Development Schemes - - - - -	214
APPROVAL AND REJECTION OF PLANS	
Duty of Local Authority - - - - -	215
NATURE OF PLANS TO BE DEPOSITED	
Requirements of Building Bye-Laws - - - - -	219
Town Planning - - - - -	221
PRACTICE AS TO EXAMINING AND APPROVING PLANS	
Duty of Surveyor's Department - - - - -	221
Town Planning Requirements - - - - -	222
Restriction of Ribbon Development - - - - -	223
LONDON	
	224

*See also titles : BUILDING BYE-LAWS ;
TOWN PLANNING SCHEMES.*

This article does not deal with the question of plans deposited for Parliamentary purposes, as to which see **BILLS, PARLIAMENTARY AND PRIVATE**, Vol. II., p. 72.

POWERS TO REQUIRE THE DEPOSIT OF PLANS

P.H.A., 1936.—Every local authority (*a*) may, and if required by the Minister of Health must, make bye-laws for regulating the construction of buildings, the materials to be used, the space about buildings, lighting and ventilation, the dimensions of rooms for human habitation, height, height of chimneys above the roof, sanitary conveniences, drainage, cesspools, ashpits, wells, tanks and cisterns for drinking water, stoves and fittings, private sewers and communications between drains and sewers and between sewers. Such bye-laws may include provisions as to the giving of notices and the deposit of plans, sections, specifications and written particulars (*b*). Building bye-laws made by local authorities under the corresponding provisions of enactments repealed by the P.H.A., 1936, cease to have effect at the end of July, 1939 (*c*). [554]

P.H.A., 1875.—Every borough council and U.D.C. (*d*) and R.D.C. (*e*) may make bye-laws with respect to the level, width and construction of new streets, and the provision for the sewage thereof. For the observance of such bye-laws they may enact such provisions

(*a*) *I.e.* the councils of boroughs, urban districts and rural districts (P.H.A., 1936, s. 1 (2); 29 Halsbury's Statutes 322).

(*b*) P.H.A., 1936, s. 61; 29 Halsbury's Statutes 372.

(*c*) *Ibid.*, s. 68; *ibid.*, 379.

(*d*) P.H.A., 1875, s. 5; 18 Halsbury's Statutes 627; L.G.A., 1894, s. 21; 10 Halsbury's Statutes 792.

(*e*) Rural District Councils (Urban Powers) Order, 1931; 24 Halsbury's Statutes 262.

as they think necessary as to the giving of notices and the deposit of plans and sections by persons intending to lay out streets (*f*).
[555]

Town and Country Planning Act, 1932.—A local authority (*g*) or a joint committee (*h*) may by resolution decide to prepare a town planning scheme with respect to any land within, or in the neighbourhood of, the district of the authority or, as the case may be, the districts of the constituent authorities or to adopt a scheme proposed by land-owners (*i*). When the resolution is approved by the Minister of Health, and thereby comes into effect, the land becomes subject to an interim development order until the scheme is prepared and approved and becomes effective (*k*). A scheme must contain such provisions as are necessary or expedient for prohibiting or regulating the development of the land to which it applies (*l*). Both the General Interim Development Order of 1933, and the model clauses for use in the preparation of schemes, issued by the Minister of Health, make provisions about the deposit and approval of plans. [556]

Restriction of Ribbon Development Act, 1935.—Where a highway authority (*m*) have adopted by resolution a standard width as respects any road, and the resolution has been approved by the Minister of Transport, it is not lawful, without the authority's consent, to construct or lay out any means of access to or from the road or to erect or make any building or permanent excavation or to construct, form or lay out any works upon land nearer to the middle of the road than a distance equal to one-half of the standard width adopted (*n*). Furthermore, as respects classified roads, it is not lawful without the consent of the authority to construct, form or lay out, any means of access to or from the road, or to erect or make any building upon land within 220 feet of the middle of the road (*o*). No power to demand the submission of plans with applications for consent is given to the highway authority. Where an application is made to a planning authority to develop land affected by the Restriction of Ribbon Development Act, 1935, then, if the planning authority are also the highway authority, the application, unless the applicant otherwise desires, is treated as if it had been also an application under that Act, and where the planning authority are not the highway authority, the former must send to the latter sufficient particulars of the application (*p*). It is submitted that such particulars would include any necessary plans. [557]

Local Acts.—Certain local Acts confer power on local authorities to require plans to be deposited and they sometimes contain detailed provisions. [558]

(*f*) P.H.A., 1875, s. 157; 13 Halsbury's Statutes 689.

(*g*) *I.e.* the councils of county boroughs and county districts, except where the latter have relinquished their powers in favour of the county council (Town and Country Planning Act, 1932, s. 2; 25 Halsbury's Statutes 472).

(*h*) Set up under s. 3 of the Act of 1932.

(*i*) *Ibid.*, s. 6. See title TOWN PLANNING SCHEMES.

(*k*) *Ibid.*, s. 10.

(*l*) *Ibid.*, s. 11.

(*m*) See title HIGHWAY AUTHORITIES, Vol. VI., p. 343.

(*n*) Restriction of Ribbon Development Act, 1935, s. 1; 28 Halsbury's Statutes 81.

(*o*) *Ibid.*, s. 2.

(*p*) *Ibid.*, s. 8.

SUBMISSION OF PLANS

Building Bye-Laws.—Model bye-laws are issued by the M. of H. Previously there had been five series, viz., IV., the full urban model for large towns, industrial areas and other thickly populated districts; IVa., the rural model; IVc., the intermediate model for parts of rural districts which had become urban in character, or for sparsely populated and residential urban districts, small towns, etc.; IVd., containing bye-laws with respect to new streets; and IVb., dealing with the drainage of existing buildings. There are now only a consolidated Series IV, and Series IVd. which is retained. The bye-laws contain clauses specifying in detail the plans that the local authority require in connection with new buildings and streets. In the memorandum pre-facing the old Series IV., dated August, 1935, the M. of H. stated, among other things :

"Local authorities proposing to make bye-laws are asked to base their proposals on the model series . . . Differences between districts in the law of building should be confined to points where there is substantial difference in local needs or circumstances. The law is unavoidably technical and sometimes controversial, and the people most concerned with these bye-laws, architects and builders (who may have building activities in several districts), have found the continual differences which formerly existed (often in details where differences could not be justified) to be probably the most irksome feature of their control by Local Authorities."

In the Memorandum pre-facing the new Series IV., the M. of H. state :

"The substitution of a single model does not imply that a local authority would seek, or the M. of H. confirm, bye-laws dealing with circumstances which do not arise in their area. It does imply that the single model series would be the normal one throughout the country, and that any necessary variation will be effected by a process of omission or selection from that model."

The model bye-laws are brought up to date at frequent intervals.

[550]

Town Planning Interim Development.—On the approval by the M. of H. of a resolution by a planning authority or duly authorised joint committee to prepare a town planning scheme for an area, the development of land in question is controlled by the Town and Country Planning (General Interim Development) Order, 1938 (q), or by a special interim development order made by the Minister. A person desiring to develop such land must apply for permission to the interim development authority (r) and must furnish with the application a plan in duplicate, sufficient to identify the land, subsequently styled the "site plan," and "particulars, illustrated where necessary by plans and drawings in duplicate, requisite to show the proposed development." The planning authority is not entitled to refuse an application on the ground that the requisite particulars, plans and drawings have not been furnished, but may, within seven days from the receipt of the application, call upon the applicant to furnish further particulars, plans and drawings in form specified by the authority. If the applicant fails to do so within seven days from the receipt of the requisition, the authority may on that ground refuse the application.

(q) S.R. & O., 1938, No. 236.

(r) Defined, *ibid.*, Art. 5.

The applicant is entitled to appeal against the decision of the authority under sect. 10 (5) of the Town and Country Planning Act, 1932 (*a*). [560]

A site plan only is required where an application is made for permission which, if granted, would be conditional upon the subsequent approval by the authority or by the Minister on appeal of the particulars of the proposed development. Where the interim development authority is also the authority for approving the plans of streets or buildings under bye-laws, regulations or local Acts, an application for such approval is deemed to be an application under the order, unless the authority within seven days of receiving the application notify the applicant that sufficient particulars have not been furnished. [561]

Town Planning Schemes.—Part VII. of the "Model Clauses for use in the Preparation of Schemes," issued by the M. of H. (February, 1937), relates to "Plans, Approvals and Appeals." All applications for the consent, permission or approval of the authority under a scheme must be in writing (Clause 61). Applications in respect of the laying out of a new street must be accompanied by plans and sections required by bye-laws and local Acts, showing the site of the proposed street in relation to other streets. A site plan, sufficient to identify the land, must be supplied with applications relating to the use of buildings or land. If an application includes the erection or siting of a building, there must be submitted, in addition to the before-mentioned site plan, a plan, referred to in the scheme as an "estate development plan," to a scale of not less than 25 inches to a mile, showing the land on which the building is to be erected, and, so far as necessary, any adjoining land belonging to the applicant; any land unit affecting any of the land in respect of which a land unit declaration has been made by the authority (Clause 35); the proposed building plots; the position of all proposed and existing buildings, and the line and widths of proposed and existing streets upon the land. Where the development is extensive, the council may consent to the plan being to a scale of not less than six inches to a mile, and where the application relates only to an extension or alteration of a building, it is sufficient to show the site of the building and extension or alteration.

Where an authority requires the external appearance of a building to be subject to their approval (Clause 45), the applicant must submit drawings showing the external appearance of the building to a scale of at least one inch to eight feet, with the proviso that the scale may be not less than one inch to sixteen feet for extensive buildings. [562]

APPROVAL AND REJECTION OF PLANS

Duty of Local Authority.—The local authority are generally required to approve deposited plans unless they are defective or unless they show that the proposed work would contravene the bye-laws, in either of which cases they must reject the plans (*b*). The exceptions to this rule are that the authority must reject the plans if they show that the proposed building or extension is to be over a drain or sewer shown on the deposited map of sewers (*c*), unless they show satisfactory pro-

(*a*) 25 Halsbury's Statutes 488.

(*b*) P.H.A., 1936, s. 64; 29 Halsbury's Statutes 375. Note that this applies to *any* building bye-laws.

(*c*) *Ibid.*, s. 25; *ibid.*, 845. As to the deposited map, see s. 32; 29 Halsbury's Statutes 348.

vision for drainage (*d*), or satisfactory and sufficient closet accommodation (*e*), if the building or extension is to be erected on ground filled up with material impregnated with faecal or offensive animal or offensive vegetable matter (unless they are satisfied that the matter has been removed or rendered innocuous) (*f*), unless the plans show that there is satisfactory means of access from the house to the street for the removal of refuse and faecal matter (*g*), unless the plans of any theatre, public hall, restaurant, shop, store, warehouse, licensed club, school (not exempted from the operation of building bye-laws), church or chapel show adequate means of ingress and egress, and passages and gangways (*h*), and unless, in regard to the plans of a house, there is a proposal for providing in or near the house a sufficient water supply (*i*). Where the plans show that it is proposed to construct a building of short-lived or otherwise unsuitable materials, the authority may, notwithstanding that the plans conform with the bye-laws, reject the plans, or, in passing them, fix a period at the expiration of which the building must be removed and impose reasonable conditions as to the use of building (*k*). [563]

The duty of the authority to approve plans may be enforced by *mandamus* (*l*). [564]

Within one month (*m*) from the date of the deposit of plans the authority must give notice to the person who deposited them. A notice of rejection must specify the defects on account of which or the bye-laws or section of the P.H.A., 1936, for non-conformity with which, or under the authority of which, the plans have been rejected. A notice that plans have been passed must state that the passing of the plans operates as an approval of them for the purposes of the requirements of the bye-laws and of the P.H.A., 1936 (*n*). Any question arising between a local authority and the person depositing the plans as to whether the plans are defective or whether the proposed work would contravene any of the bye-laws may, on the application of the person, be determined by a court of summary jurisdiction, but application must be made before the work is substantially commenced (*o*). [565]

Town Planning.—An application to develop land subject to an interim development order must be granted or refused by the interim development authority within two months, unless the applicant has agreed in writing to allow a longer period. Failure to do so is deemed to be a granting of the application unconditionally (*p*). Certain applications may not be refused. [566]

(*d*) P.H.A., 1936, s. 37.

(*e*) *Ibid.*, s. 43.

(*f*) *Ibid.*, s. 54.

(*g*) *Ibid.*, s. 55. This does not apply to houses erected in accordance with plans and specifications approved by the Minister of Health under the Housing Acts.

(*h*) *Ibid.*, s. 59.

(*i*) *Ibid.*, s. 137.

(*k*) *Ibid.*, s. 58 (1).

(*l*) *R. v. Newcastle-upon-Tyne Corpns.* (1880), 58 J. P. 788; 38 Digest 191, 294. See Lumley's Public Health, 11th ed., Vol. I, pp. 221 *et seq.* See also title *MANDAMUS*, Vol. VIII., p. 315.

(*m*) P.H.A., 1936, s. 64 (4); 29 Halsbury's Statutes 975. The period may be five weeks in certain circumstances.

(*n*) *Ibid.*, s. 64 (2).

(*o*) *Ibid.*, s. 64 (3).

(*p*) Town and Country Planning Act, 1932, s. 10 (3); 25 Halsbury's Statutes 482.

The period may be different where the land is subject to an actual scheme, for in the issue of "Model Clauses for use in the Preparation of Schemes," dated February, 1937, clause 62 provides for a period of one month, except that in regard to applications under clauses 18 (2), 28 (2) or 46 (2), where the council have notified an adjoining owner that development or the fixing of a building line is proposed, the period is two months. This period is also given in respect of applications to which clauses 24, 32, 37 (4) or 40 apply. The Ministry, in a note upon this clause, states that it is obviously convenient that decisions under bye-laws and under a planning scheme should be given simultaneously, and that a period of one month in respect of planning applications has been invariably approved by the Town and Country Planning Advisory Committee. The allowance of two months in the interim development period is justified on the grounds that the main outlines of control may not yet have been settled. Generally there appears to be close co-operation between the respective authorities with the object, so far as practicable, of a simultaneous notification of decisions, even where the periods vary, and it is desirable that this course should be followed in all cases. [567]

Retention of Plans.—Where sect. 16 of the P.H.A. Amendment Act, 1907 (g), has been adopted, the local authority may retain any drawings, plans, elevations, sections, specifications and written particulars, descriptions or details deposited with and approved by them.

Building bye-laws made under sect. 61 of the P.H.A., 1936, may require that plans be deposited in duplicate, and if the bye-laws contain such a requirement, the authority may retain one copy whether the plans are approved or not (r). [568]

Duration of Approval.—Where sect. 15 of the P.H.A. Amendment Act, 1907 (s), has been adopted, the local authority may declare that the deposit of any plans or sections of any street shall be of no effect if the work to which the plans or sections relate is not commenced (a) as to plans and sections deposited before the section comes into force in a district, within three years from that date; (b) as to plans and sections deposited on or after the section comes into force in a district, within three years of the deposit of the plans and sections. The local authority is required to give notice of the section to every person who has deposited plans and sections for an intended new street which has not been commenced before the section comes into force in a district and to attach a similar notice to the approval of every such intended work in relation to which plans and sections have been deposited after the section comes into force in a district. Apparently the former notice must be given whether the deposited plans were approved or not, but the purpose of the requirement is not clear, unless it is intended to cover cases where plans have been disapproved not-

(g) 13 Halsbury's Statutes 916. This section and s. 15 are repealed by the P.H.A., 1936, in so far as they relate to buildings.

(r) P.H.A., 1936, s. 64 (5); 29 Halsbury's Statutes 375. In *Gooding v. Ealing Local Board* (1884), 1 T. L. R. 62; 88 Digest 193, 304, it was held that a local authority who intimated to the person depositing the plans that the latter would be retained, even though the plans were rejected, might retain them, but this case is of doubtful authority.

(s) 13 Halsbury's Statutes 916; repealed by the P.H.A., 1936, in so far as it relates to buildings.

withstanding the fact that they comply with the bye-laws (*t*). Where plans have rightly been disapproved, the deposit, in any event, would be of no effect after disapproval. The position in the event of failure by the local authority to give notice of rejection of the plans within the prescribed period appears to be somewhat doubtful, but apparently in such circumstances there would be no time limit upon the commencement of the work. [569]

The position is similar under the P.H.A., 1936. Where plans have been deposited and either the plans have been passed or notice of rejection has not been given within the prescribed period (*a*), and the work has not been commenced, then (*a*) in the case of plans deposited before the date of the commencement of the Act, within three years from that date, and (*b*) in the case of plans deposited on or after that date, within three years from the deposit, the local authority may, at any time before the work is commenced, by notice to the person by whom or on whose behalf the plans were deposited, or the owner for the time being of the land, declare that the deposit of the plans shall be of no effect, and when such notice is given, the Act and the bye-laws shall, as respects the proposed work, have effect as if no plans had been deposited (*b*). The local authority must give notice of the foregoing provisions to the person depositing plans passed by the authority before the date of the Act, which relate to works not commenced before that date. Such notice must be given before April 1, 1938 (*c*). Sect. 15 of the Act of 1907 remains in force in respect of any plans deposited before the commencement of the Act of 1936 (*d*). A question arising between a local authority and a person who has executed or proposes to execute any work as to the application to that work of any building bye-laws or whether the plans are in conformity with the bye-laws or whether the work has been executed in accordance with the plans as passed may, on a joint application, be determined by the Minister whose decision is final. A special case may be stated for the opinion of the High Court on a point of law (*e*).

A notice of approval of plans does not exonerate from risk the person commencing the work as, if a local authority approve plans which are not in conformity with the bye-laws, such approval is illegal and inoperative (*f*). [570]

NON-COMPLIANCE WITH APPROVED PLANS

A person who deposits plans as required by the bye-laws and complying therewith, and, in executing the works to which the plans relate, varies the work to any substantial extent, may be convicted of a breach of the bye-laws requiring the deposit of plans (*g*). It may be assumed that the deposit of plans which are substantially incorrect is equivalent to failure to deposit plans as required by the bye-laws.

Although a local authority appears to be entitled to disapprove plans in respect of which the facts within their knowledge show that the

(*t*) *Yabbicom v. King*, [1809] 1 Q. B. 444; 7 Digest 340, 39.

(*a*) See *ante*, p. 216.

(*b*) P.H.A., 1936, s. 66 (1); 29 Halsbury's Statutes 378.

(*c*) *Ibid.*, s. 66 (8).

(*d*) *Ibid.*, s. 66 (2).

(*e*) *Ibid.*, s. 67.

(*f*) *Yabbicom v. King*, *supra*; 38 Digest 190, 236.

(*g*) *James v. Masters*, [1893] 1 Q. B. 355; 57 J. P. 167; 38 Digest 193, 308.

owner at the time the plans are deposited is unable to carry out the plans (*h*), they are under no obligation to take into consideration anything not disclosed by the plans and notice, or to inspect the site or take measurements to ascertain whether the plans are in fact correct. This question was argued at some length in a case arising under sect. 3 of the P.H. (Buildings in Streets) Act, 1888 (*i*). In this case (*k*) a builder had deposited plans of a building for the approval of the local authority. The plans appeared to indicate that it was proposed to erect the front wall of the new building approximately 2 ft. 6 ins. beyond the front line of the existing building on the adjoining site. The plans were approved by the council. After the erection of the building had been commenced, it was reported to the council that the front line of the building on the adjoining site had been incorrectly shown upon the deposited plan, and that the front wall of the new building was 7 ft. 6 ins. beyond the front wall of the adjoining building, instead of 2 ft. 6 ins. It was argued on behalf of the appellants that they were not bound by the plan so far as the front line of the adjoining building was concerned, as they were under no obligation to show the position of that building upon their plan. They had, in fact, correctly indicated upon the plan the front line of their proposed building in relation to the road, and had erected their building in that position; the error in the position of the adjoining building was therefore not material. The Lord Chief Justice, in delivering the unanimous judgment of the court, to the effect that the case be sent back to quarter sessions with a direction that the appeal must be dismissed, and the conviction affirmed, said :

" . . . it seems to me that the argument made in the Court below . . . on behalf of the Respondents, was manifestly correct, namely, that inasmuch as the said site plan was incorrect and misleading as to the extent of the projection, their approval of the said plans did not constitute a written consent within the meaning of sect. 3 of the P.H. (Buildings in Streets) Act, 1888, to the erection of that which was erected, and that no written consent had been given by them to the Appellants to erect a house, part of which would project beyond the front main wall of the said adjoining building in the manner and to the extent hereinbefore described, that is to say, in plain terms, consenting to 2 ft. 6 ins. is a different thing from consenting to 7 ft. 6 ins. and it would take a great deal of argument to persuade me otherwise." [571]

NATURE OF PLANS TO BE DEPOSITED

Requirements of Building Bye-Laws.—At one time, plans deposited with the local authority were often badly drawn, and generally upon material which so seriously deteriorated in course of time that it was almost impossible to handle it without causing damage. All the series of model bye-laws now require that plans and sections of new streets or buildings deposited for the approval of the local authority shall be drawn or reproduced in a clear and intelligible manner on durable material. When the reproduction of plans by the photocopying process was first introduced, some local authorities refused to

(*h*) *Thompson v. Falsworth Local Board* (1881), 46 J. P. 21; 26 Digest 556, 2511, and *R. v. Tynemouth Corp.*, [1911] 2 K. B. 361; 26 Digest 556, 2514.

(*i*) 18 Halsbury's Statutes 810.
(*k*) *Surbiton U.D.C. v. H. C. Jones & Co. (Surrey), Ltd.* (unreported : Divisional Court, November 5, 1935).

accept plans and sections in this form, but the process has been so improved that it is now in almost universal use, and the model bye-laws definitely authorise the deposit of plans and sections of this type. The model bye-laws lay down certain minimum scales to which the various plans and sections required to be submitted to the local authority must be drawn. These scales are such that essential information can be clearly shown and dimensions ascertained with a reasonable degree of accuracy by direct measurement from the drawings. It is usual, however, to figure important dimensions, and when this is done the figures take precedence of measurements by scale. The plans and sections are required to include all particulars necessary to show whether the proposed new street or building will comply with the bye-laws. [572]

Various items of information to be shown on the plans and sections are specified in detail. Under the old urban and intermediate series of model bye-laws, plans of new streets must include the names of the person intending to lay out the street ; of the owners of the site of the street, and of the owners of lands on each side, also the name of the street, if any. The points of the compass, the length, width and levels of the street ; the existing or intended building line on each side ; the position of the street in relation to the nearest existing streets, and any provision for carrying off the surface water from the street, must be given. Sections of new streets must include the levels of the present surface of the ground forming the site of the proposed street, of the land and proposed building sites on each side of the street, of the new street and the inclination of its surface, and of any intended or existing street with which the new street is intended to connect.

The requirements of the new Model Series IVd. in relation to the deposit of plans and sections are essentially the same, and in almost identical terms. [573]

The information shown upon plans and sections of intended buildings must include a plan of every floor and sections of every storey, floor and roof of the building, unless any such part of the building is not governed by, or material for the purposes of any of the bye-laws applying to the buildings ; also a block plan of the building and a key plan showing the position of the site if the block plan is not sufficient for this purpose.

So far as may be necessary to show whether the building complies with the bye-laws, the information given must include particulars and dimensions of the foundations, walls, floors, roofs, chimneys and other parts of the building, and of any watercloset, earth closet, privy, fixed ashpit, or cesspool, also the levels of the site, the lowest floor, and of any street adjoining the curtilage of the building in relation to one another, and above some known datum. [574]

The block plan, so far as may be necessary to show whether the building complies with the bye-laws, must show the size and position of the building and of the appurtenances and the adjoining properties ; the position and width of any adjoining street ; the size and position of any open space belonging to the building ; the position of any watercloset, earth-closet or privy, and of any fixed ashpit, cesspool and well. Where it is intended to construct a wall with a structural framework of steel, iron or reinforced concrete or in concrete or reinforced concrete, detailed drawings must be submitted. A plan must also be submitted showing the lines, size, depth and inclination and means of ventilation

of all drains and position of any sewer with which they are to be connected.

All plans are required to be signed by the person responsible for the application. [575]

Town Planning.—For the nature of the plans to be submitted to the interim development authority, see *ante*, p. 214.

Clause 61 of the latest issue of "Model Clauses for use in the preparation of Schemes" (February, 1937) contains the following provisions as to applications for any consent, permission or approval of the council required by the scheme. Applications must be in writing and accompanied by plans and particulars. Detailed provision is made as to the scale of the plans and what is required to be shown in various applications (*l*). Plans and drawings must be submitted in duplicate and be on "suitable and durable material." The council may retain one copy which must be available for inspection by interested persons. [576]

PRACTICE AS TO EXAMINING AND APPROVING PLANS

Duty of Surveyor's Department.—The usual practice of local authorities relative to the examination and consideration of plans submitted for their approval, is that shortly after the receipt of plans they are examined by a responsible officer in the surveyor's department who prepares a detailed report.

Apparently where plans have been submitted, which in some respects do not comply with the bye-laws, and have been approved, either inadvertently or deliberately, action could be taken by the local authority against a person who proceeded to erect the building in accordance with such plans, but in contravention of the bye-laws, notwithstanding any notice of approval issued by the local authority (*m*). This obviously would impose serious hardship upon the person submitting the plans, if he had acted in good faith, and it is important for this and other reasons that all plans submitted to local authorities should be examined and reported upon with skill and care. [577]

It is desirable that this report be made upon a form down one side of which is printed a list of the whole of the matters in respect of which the bye-laws require compliance. In many cases the form includes also the matters which may arise in connection with planning and other enactments for the administration of which the authority is responsible. The report must indicate whether, and to what extent, the plans conform with each of these requirements. The person depositing any plan, which, from the information in the report, appears to contravene the bye-laws, is so advised and invited to attend at the surveyor's office to discuss the matters in question and amend his plans if he so desires.

Prior to the meeting of the plans committee, the report and plans are examined and considered by the surveyor, who, as to plans which comply, reports merely the fact of compliance, and as to each plan which does not comply, reports the matters in contravention. [578]

(*l*) See *ante*, p. 215.

(*m*) P.H.A., 1875, s. 158; 13 Halsbury's Statutes 690; P.H.A., 1936, s. 65; 29 Halsbury's Statutes 876; Model Bye-Law No. 2.

Town Planning Requirements.—Most of the plans have now to be considered also for compliance with town planning requirements. Moreover, having regard to the fact that the approval of plans by a local authority, even when such plans have been considered by the authority in their relation to the bye-laws only, has been held (*a*) also to constitute a written consent within the meaning of sect. 3 of the P.H. (Buildings in Streets) Act, 1888 (*e*), to the bringing forward of the front of a building beyond the front main wall of an adjoining building, when such bringing forward has been shown on the plans, all building plans deposited should be examined with this in mind. Some local authorities embody in their form of approval of plans a statement to the effect that the plans are approved only in respect of their conformity with the bye-laws, and that the approval does not constitute a consent to the bringing forward of a building under the last mentioned section of the 1888 Act, and a separate application is required when such an approval is desired. This appears to be a wise and reasonable precaution. [579]

Clause 18 of "Model Clauses for use in the Preparation of Schemes" provides that before a person commences to lay out a new street, he shall apply for the approval of the authority, and submit plans and sections of the proposed street. The council, upon receiving an application, must notify persons having control of neighbouring land likely to be substantially affected by the proposal that plans and sections of the proposed street have been submitted, and that, before approving the plans and sections they will have regard to any proposals they may submit, within one month, in respect of their land. Reasonable facilities must be given to both the applicant and neighbouring owners to inspect any plans, sections or proposals submitted under this clause. [580]

The authority is required to disapprove the plans and sections, or approve them subject to modifications or conditions, if they are of opinion that the width, sections or specifications are unsatisfactory, or that the siting of the proposed street will be inconvenient to traffic, or will be prejudicial to the development of neighbouring land or injurious to amenity. Otherwise they must approve the plans and sections, unless they are contrary to any bye-law or local Act. The authority is given power to make concessions as to the width of a new street, and to vary an approved plan or approve a new plan—(5) and (6). An applicant who is aggrieved by the decision of the authority may appeal—(7). Clause 19 contains provisions as to communicating streets, and as to the inspection of plans and sections by owners of land affected by the proposals for a new street and communicating street. Clause 27 provides that where the authority, in the interests of safety, serves upon an owner a notice imposing restrictions as to the height or position of walls, fences or hedges near a corner or bend in a road, the notice shall be accompanied by a plan of the land to which the notice relates. [581]

Where an application is made for the declaration of a land unit, the authority may require the applicant to submit a plan of the whole or part of his adjoining land which has not already been included in a land unit (clause 35 (4)), provided that (35 (10)) when a building plan

(*a*) *Merrett v. Charlton Kings U.D.C.* (1908), 67 J. P. 419, D. C.; 26 Digest 559, 2542; *Mullis v. Hubbard*, (1908) 2 Ch. 481; 26 Digest 559, 2542.

(*e*) 18 Halsbury's Statutes 810.

for a dwelling-house or residential building is deposited, it shall be deemed to be an application for a declaration of land unit. A person proposing to develop land included in a land unit may submit for the approval of the authority a plot plan, giving particulars of the proposed development, upon which shall be shown existing buildings. The authority may approve the plan, with or without modification, or disapprove it. The applicant, if dissatisfied with the decision, may appeal.

An application for approval to the erection of flats shall be accompanied by the plans and particulars required by clause 61, and in addition by a plan of each floor of the proposed flats (clause 38).

[582]

In respect of a proposed building to be used for business or industry, which will abut upon a highway or intended highway, not less than twenty-eight days' notice shall be given to the authority before the building is commenced (clause 58); but, in this case also, an application, or the submission of plans and sections in respect of the proposed building, under any other section of the scheme or bye-laws or local Acts, is a sufficient notice under this clause.

Notice, together with plans and particulars, must be given to the authority at least one month before the commencement of any alteration, extension or replacement of any building, in existence within two years of the "material date," in such a manner that, but for the provisions of Part VI. of the scheme, it would be a contravention of the scheme. [583]

Restriction of Ribbon Development.—As indicated, *ante*, p. 213, the Act of 1935 gives no power to require plans to be submitted.

No serious difficulty arises where the highway authority is also the bye-law and town planning authority, as they are entitled to demand the necessary plans in connection with the exercise of their powers under bye-laws and the Town Planning Acts. The Act provides (sect. 8 (2) (a)) that where the planning authority is also the highway authority for the purpose of consents under sects. 1 and 2 of the Act, one application shall be accepted for both purposes. Where, however, bye-law, planning and ribbon development applications are dealt with by different independent authorities, the position is much more troublesome. [584]

The Act provides (sect. 8 (2) (b)) that, where the planning authority is not the highway authority, the former shall "send sufficient particulars of the application to the highway authority." Apparently, "sufficient particulars" would include any necessary plans.

In some cases where the bye-law and planning authorities are one, they require the deposit of plans in triplicate, one copy being sent to the highway authority for use in connection with the application under the Restriction of Ribbon Development Act, and the second and third copies being used in connection with bye-laws and town planning. Some authorities return the third copy to the applicant with the notices of approval or disapproval. It is suggested that the town planning authority is entitled to ask for plans in triplicate under Article 8 (1) of the Town and Country Planning (General Interim Development) Order, 1938, which gives them power to require an applicant to give "further particulars, plans or drawings" in the form specified by them. There appears to be some doubt, however, whether a demand for plans in triplicate, some of which are required for purposes

independent of the planning application, could be enforced, notwithstanding the obligation imposed upon the planning authority by sect. 8 (2) (b). Moreover, it would seem that an authority might incur some risk in refusing an application upon the ground that an applicant has failed to supply plans in triplicate. [585]

LONDON

The L.C.C. (General Powers) Act, 1931, sect. 49 (p), provided that fees as prescribed by the council and approved by the Minister of Health shall be paid in respect of maps, plans and other documents deposited with the clerk of the council pursuant to standing orders of Parliament or any Act or any rule or regulation made under any Act or by any Government department, and applies sect. 2 of the Parliamentary Documents Deposit Act, 1887 (q). Rules have been made by the L.C.C. under the London Building Act, 1930 (r), governing the scale, colouring and other features required in respect of plans submitted in connection with applications. These rules follow the usual professional practice. [586]

(p) 24 Halsbury's Statutes 278.

(r) 23 Halsbury's Statutes 218.

(q) 12 Halsbury's Statutes 473.

PLANT AND MACHINERY

See MACHINERY, RATING OF.

PLANTING OF TREES

PAGE	PAGE		
TREES IN PARKS, PUBLIC WALKS AND OPEN SPACES — — — — —	224	PRESERVATION OF TREES UNDER TOWN PLANNING SCHEMES — — — — —	227
TREES IN ROADS — — — — —	225	LOCAL LEGISLATION — — — — —	228
Under P.H.A. Amendment Act, 1890 — — — — —	225	GENERAL PRACTICAL CONSIDERA- TIONS — — — — —	228
Under Roads Improvement Act, 1925 — — — — —	226	Roadside Planting — — — — —	228
FINANCIAL ASSISTANCE UNDER DEVELOPMENT AND ROAD IM- PROVEMENT FUNDS ACT — — — — —	227	Open Space and Cemetery Plant- ing — — — — —	228
		ROADS BEAUTIFYING ASSOCIATION LONDON — — — — —	229

See also titles :

AMENITIES ;
FORESTRY ;
GARDENS AND SQUARES ;
LONDON SQUARES ;

OPEN SPACES ;
PUBLIC PARKS ;
ROAD AMENITIES ;
TREES AND HEDGES.

Trees in Parks, Public Walks and Open Spaces.—The powers to plant or encourage the planting of trees and shrubs in parks, public walks and open spaces are derived in the absence of a local Act

principally from the P.H.As., 1875 to 1932 (a), and the Open Spaces Act, 1906 (b).

By sect. 164 of the P.H.A., 1875 (c), a local authority under the P.H.A. (d) may lay out, plant, improve and maintain lands leased or purchased by them for use as public walks or pleasure grounds and may support or contribute to the support of public walks or pleasure grounds provided by any person. They may also make bye-laws for the regulation of any such public walks or pleasure grounds, and these bye-laws may and usually do contain provisions for the protection of trees and shrubs. Model bye-laws have been issued by the M. of H. under this section (e).

By sect. 45 of the P.H.A. Amendment Act, 1890 (f), the above powers are extended to include a power to contribute towards the laying out, planting or improvement of conveniently situated pleasure grounds presented by private donors, whether within the district or not. By sect. 8 (1) (d) of the L.G.A., 1894 (g), the powers of sect. 164 of the Act of 1875 were conferred on parish councils, as regards grounds under their control or to the expense of which they have contributed.

Parallel powers are conferred upon county councils and borough and district councils by sects. 10, 12 and 14 of the Open Spaces Act, 1906 (h), with regard to any open space or burial ground in which they have acquired an interest under sect. 9 of that Act, or which is otherwise vested in them, and a county council may invest a parish council with them (i). See also titles GARDENS AND SQUARES, LONDON SQUARES, OPEN SPACES, PUBLIC PARKS. [587]

Trees in Roads.—In places where sect. 48 of the P.H.A. Amendment Act, 1890 (k), is in force, the authority may cause trees to be planted in any highway repairable by the inhabitants at large, and erect guards or fences for their protection; but it must not thereby hinder the reasonable use of the highway (l), nor cause a nuisance to any adjacent owner or occupier (m). Trees planted under the authority of this

- (a) 12 Halsbury's Statutes 623 *et seq.*; 25 Halsbury's Statutes 468.
- (b) 12 Halsbury's Statutes 382.
- (c) 18 Halsbury's Statutes 693. Extended to rural district councils by S.R. & O., 1931, No. 580; 24 Halsbury's Statutes 262.

(d) The council of a borough, urban district or rural district.

(e) These (series X.) may be purchased at H.M. Stationery Office, Kingsway, W.C.2, price 3d., also a simpler form (Xa.) for the use of parish councils or other local authorities whose pleasure grounds do not stand in need of very detailed bye-laws.

(f) 18 Halsbury's Statutes 841. In force in all boroughs and urban districts for which Part III. of the Act has been adopted, *ibid.*, ss. 2 and 3, and in rural districts; Rural District Councils (Urban Powers) Order, 1931, S.R. & O., 1931, No. 580; 24 Halsbury's Statutes 262.

(g) 10 Halsbury's Statutes 780.

(h) 12 Halsbury's Statutes 387–389.

(i) Open Spaces Act, 1906, s. 1; *ibid.*, 382.

(k) 18 Halsbury's Statutes 840, see note (f), *supra*. Under the order of 1931 there mentioned, rural district councils may exercise this power with consent of the county council: *vide* note (g), *infra*. The power is applied to county councils by Sched. I., L.G.A., 1929; 10 Halsbury's Statutes 975, in relation to county roads as defined by s. 29 (1); *ibid.*, 903.

(l) 18 Halsbury's Statutes 840. There is a continuing duty on the local authority to take reasonable care for the protection of the public, *Morrison v. Sheffield Corp.*, [1917] 2 K. B. 866; 26 Digest 445, 1623 (dangerous tree guard). See, however, *Tregellas v. L.C.C.* (1897), 14 T. L. R. 55; 26 Digest 403, 1264 (local authority not liable for neglect to cut overhanging branches). See also P.H.A., 1875, s. 308; 18 Halsbury's Statutes 755.

(m) An adjoining owner may lop branches overhanging his premises, see *Lemmon v. G.L.* X.—15

provision will be the property of the council ; and any person injuring them is liable to a penalty not exceeding £5 and to compensate the local authority (*n*). The M. of H. is willing to entertain applications from urban authorities for sanction to loans for the provision of trees and the necessary guards. The usual term of repayment is ten years.

Sect. 1 of the Roads Improvement Act, 1925 (*o*), confers similar powers on the Minister of Transport and any county council or other highway authority with regard to highways maintainable by and vested in him or them respectively (*p*). They may also lay out grass margins in such highways. Where an urban authority under this section incurs expense in connection with a county road which is maintained and repaired by them pursuant to sects. 32 and 33 of the L.G.A., 1929 (*q*), the expenses are not, without the consent of the county council, to be treated as part of the cost towards which the county council are required to make an annual payment under that Act (*r*). [588]

The powers given by sect. 1 of the Roads Improvement Act are helpful to highway authorities who wish to preserve and enhance the amenities of their district, particularly where schemes of improvement of existing roads and the construction of new roads are being carried out, since many such schemes involve the cutting down of trees and consequent interference with the amenity of the areas affected. Some of the new roads, whilst better adapted for modern traffic than the old ones, are essentially featureless and tree planting would go far to relieve their monotony. These powers offer opportunity to enterprising highway authorities to plant fruit trees alongside the highways, as is the practice in many continental countries, though probably effective safeguards against the ravages of the mischievous part of the population would be required. If fruit trees are planted effectual safeguards against damage to neighbouring privately owned fruit trees should be adopted. This damage may be caused by pests developing on insufficiently supervised fruit trees and the apprehension of this danger has led to opposition to the proposal to plant fruit trees in some districts. The importance of this point depends chiefly on the user of neighbouring land. Where highway authorities make specific provision for expenditure on the planting of trees and shrubs in the estimates submitted in connection with approved schemes of road improvement or new construction, the Minister of Transport will be prepared to accept the expenditure as part of the cost of the scheme for grant purposes (*s*).

If damage is caused to the property of any person by anything done

v. Webb, [1895] A. C. 1 ; 2 Digest 64, 406, and may sue for damages, see *Smith v. Giddy*, [1904] 2 K. B. 448 ; 2 Digest 64, 407.

(*n*) P.H.A., 1875, s. 149 ; 13 Halsbury's Statutes 685. As to trees existing in a highway at the date of dedication, see *Turner v. Ringwood Highway Board* (1870), L. R. 9 Eq. 418 ; 20 Digest 315, 478 ; *Coverdale v. Charlton* (1878), 4 Q. B. D. 104, C. A. ; 26 Digest 620, 616 ; *Stilwell v. New Windsor Corpn.*, [1932] 2 Ch. 155 ; Digest (Supp.), and Article J. P., Newspaper, Vol. XCIVI., p. 520.

(*o*) 9 Halsbury's Statutes 219.

(*p*) Trees cannot therefore be planted in a street which is not repairable by the inhabitants at large, nor by the U.D.C. under this section in a county road not claimed by them. Rural district councils can continue to exercise functions under s. 48, P.H.A., 1890, but only with the consent of the county council ; L.G.A., 1929, s. 80 (8) ; 10 Halsbury's Statutes 904.

(*q*) Sched. X., r. 2 ; 10 Halsbury's Statutes 905.

(*r*) Roads Improvement Act, 1925, s. 1 (4) ; 9 Halsbury's Statutes 220.

(*s*) Circular No. 420 (Roads) (England and Wales), February 5, 1935. See titles GRANTS and ROAD GRANTS.

in the exercise of the powers conferred by the section, that person is, unless such damage is caused or contributed to by his negligence, to be entitled to recover compensation from the Minister or authority by whom the powers were exercised (*t*). The question whether compensation is payable or as to the amount of any compensation payable is to be decided if the parties so agree by a single arbitrator or in default of such agreement by the county court (*a*).

Care should be taken to give notice to and comply with the reasonable requirements of the Postmaster-General if any work proposed under the section is likely to involve the alteration of any telegraph line (*b*). [589]

Financial Assistance under Development and Road Improvement Funds Act.—For the purposes of Part II. of the Development and Road Improvement Funds Act, 1909 (*c*), the expression "improvement of roads" includes the planting, laying out, maintenance and protection of trees, etc., in and beside roads, so as to enable the Minister of Transport to make advances and contributions thereto under sect. 8 of the Act (*d*). [590]

Preservation of Trees under Town Planning Schemes.—A town planning authority is authorised by sect. 46 of the Town and Country Planning Act, 1932 (*e*), to include in a town planning scheme provisions for the preservation of single trees or groups of trees.

Clause 49 of the Model Clauses (*f*) carries out the provisions of sect. 46 by enabling the council having regard to the amenities of any district to register for preservation any growing tree over a minimum height and girth (to be specified in the clause). The clause also provides for the preservation of groups of trees (particulars of which are to be set out in the clause). The M. of H. has suggested a height limit of 30 feet and a girth limit of 2 feet 6 inches at a height of 5 feet as the minimum dimensions of a tree to be preserved. It is desirable to prepare (so far as possible) a list of trees to be preserved before the scheme is actually approved. In some districts (*g*) a small label is attached to each tree marked for preservation, the following being the lettering of the labels :

Reserved.

Town Planning Scheme 193 .

Registered No. .

Compensation for preservation of trees under the Act is not excluded under sect. 19 (*h*).

A local authority may specify areas of woodlands to be protected (*i*). [591]

(*t*) Roads Improvement Act, 1925, s. 1 (5); 9 Halsbury's Statutes 220. The section does not provide a time limit for making a claim. See, however, the Public Authorities Protection Act, 1893; 18 Halsbury's Statutes 455.

(*a*) Roads Improvement Act, 1925, s. 9 (1) (a); 9 Halsbury's Statutes 227.

(*b*) *Ibid.*, s. 1 (6), and see Telegraph Act, 1878; 19 Halsbury's Statutes 261, which deals with work involving alteration in telegraph lines.

(*c*) 9 Halsbury's Statutes 212.

(*d*) Roads Improvement Act, 1925, s. 2; 9 Halsbury's Statutes 220, 227.

(*e*) 25 Halsbury's Statutes 512. See also title TOWN PLANNING SCHEMES.

(*f*) Published in 1937 and to be purchased from H.M. Stationery Office, price 2s.

(*g*) E.g. Coulsdon and Purley Urban District.

(*h*) 25 Halsbury's Statutes 492.

(*i*) Town and Country Planning Act, 1932, s. 46; 25 Halsbury's Statutes 512; and see title FORESTRY.

Local Legislation.—Recent local legislation has contained clauses empowering the local authority to preserve trees of special beauty, e.g. Essex County Council Act, 1933 (*k*), for the effective administration of which the county council has appointed a tree warden who is a qualified arboriculturalist, who, except in the urban district of Romford (*l*), has control over all tree planting on highways and afforestation of open spaces, and reports on applications by urban district councils for the scheduling of trees for preservation. [592]

General Practical Considerations.—The planting and care of trees demands knowledge and skill, which in roadside and other public planting must be adapted to meet special problems. In private forestry, the choice of trees is governed by marketing considerations and the site is chosen for its adaptability to the purpose. The position for roadside trees is fixed without relation to its suitability; on the other hand, the commercial value of the trees has not to be considered and there is, therefore, a wider range from which to select suitable trees. [593]

Roadside Planting.—It must be realised that roadside planting has become a specialised branch of arboriculture, which demands expert treatment if it is to attain its full value in serving not only an aesthetic but a useful purpose. Examples of the latter aspect may be found in giving visual assistance to motorists at night, by the planting of central island sites with shrubs of sufficient height to shut out the headlights of approaching cars, and in marking curves by the planting of silver barked trees. Probably the best example of the usefulness of trees and shrubs to the engineer is planting on cuttings and embankments, to prevent the soil from slipping. Inexpert planting constitutes no adornment and is uneconomic. The importance of planting high-grade trees, with standard qualifications of height, girth of stem, leader, etc., and of reducing the need of replacement, cannot be exaggerated. Their after-care is of equal consequence. [594]

Open Space and Cemetery Planting.—This form of tree planting is free from many of the special difficulties of roadside planting, in that there is a much wider choice of soil and situation and the conditions generally are not so hard upon the young trees. The problems are therefore mainly those of ordinary arboriculture. Even in this subject, however, there are special considerations confronting the responsible authorities, such as the placing of trees having regard to their ultimate size and so as to leave a maximum amount of open ground, and in cemetery planting the provision of a suitable balance of decorative trees with the more sombre evergreens and conifers usually associated with these areas. [595]

Roads Beautifying Association.—In addition to the purely official authorities who exercise their functions in roadside planting, there was formed in 1928 by the then Minister of Transport, Colonel Wilfrid Ashley (now Lord Mount Temple) an association of experts under the name of the Roads Beautifying Association. This body has collected authorities from Kew, the Royal Horticultural Society, and the Government Forestry Department, and is therefore fully equipped to give advice to county councils and other public bodies on the most suitable trees and methods for roadside planting. While they have no official status, they are in close liaison with the M. of T. and have carried out

(*k*) 23 & 24 Geo. 5, c. xlvi., s. 144.

(*l*) *Ibid.*, s. 144 (7).

much work for the councils of various counties, boroughs and urban districts.

It is generally recognised amongst arboriculturalists that roadside planting gives rise to some of the most difficult problems. Many failures are due to cheap and faulty material, and this Association undertakes to inspect the stock of any nurseryman whose estimate for public work has been accepted by a local authority. The Association is also in close touch with the Automobile Association over such questions, among others, as planting where it might prove dangerous to traffic, and existing trees with heavy limbs overhanging highways to the danger of the public. In addition, they have published an authoritative book on roadside planting and various pamphlets in connection with the pruning of street and roadside trees.

Although the work of the Association has so far lain chiefly in the Home Counties, their activities have spread as far as the extreme North of England, West of Wales, and Cornwall. Any local authority or local officials requiring advice about planting is invited to inquire of the Association (m). [596]

London. Open Spaces, etc.—The Open Spaces Act, 1906, applies to the L.C.C., City corporation and metropolitan borough councils (n). The P.H.A., 1875, sect. 164, and P.H.A. Amendment Act, 1890, sect. 45 (o), do not apply to London. [597]

Roads, etc.—The Roads Improvement Act, 1925, sect. 1 (p), applies to the L.C.C., City corporation and metropolitan borough councils as highway authorities (q). The L.C.C. is specifically described as a highway authority for the purpose of Part II. of the Development and Road Improvement Funds Act, 1909 (r). The L.C.C. (General Powers) Act, 1904 (s), empowers metropolitan borough councils to plant and maintain trees in any highway within their respective boroughs. The power must not be exercised so as to hinder the use of the highway or be a nuisance or injurious to adjacent owners or occupiers. Before exercising the powers in relation to any highway, notice must be given to occupiers of premises along the highway, and if two-thirds or more of the occupiers object the power must not be exercised.

Town Planning.—The L.C.C. and City corporation are town planning authorities and have the power conferred by sect. 46 of the Town and Country Planning Act, 1932 (t). [598]

(m) The address of the Association is : 7, Buckingham Palace Gardens, London, S.W.1.

(n) See s. 1 ; 12 Halsbury's Statutes 382.

(o) 13 Halsbury's Statutes 693, 841.

(p) 9 Halsbury's Statutes 219.

(q) See title LONDON ROADS AND TRAFFIC.

(r) S. 15 ; 9 Halsbury's Statutes 215.

(s) S. 40 ; 11 Halsbury's Statutes 1260.

(t) 25 Halsbury's Statutes 512.

PLATFORMS

See SAFETY PROVISIONS OF BUILDINGS AND STANDS.

PLAY-CENTRES

See EDUCATION SPECIAL SERVICES.

PLAYING FIELDS

See GAMES, PROVISION FOR.

PLEASURE BOATS

	PAGE		PAGE
DEFINITION - - - - -	230	PRIVATE ACTS - - - - -	231
POWERS OF LOCAL AUTHORITIES - - - - -	230	LONDON - - - - -	232

*See also titles : LAKES IN PLEASURE GROUNDS ;
PUBLIC PARKS.*

Definition.—There is no definition of a pleasure boat in the P.H.As. which, so far as local authorities are concerned, contain the general law as to their licensing, provision and use. In several private Acts, however, such a definition is contained; e.g. in the Thames Conservancy Act, 1932 (*a*), where pleasure boat is defined to include "any ship, launch, houseboat, boat, randan, wherry, skiff, dinghy, shallop, punt, canoe or yacht, however navigated, not being used solely as a tug or for the carriage of goods and not being certified by the Board of Trade as a passenger steamer to carry two hundred or more passengers." In regard to steamboats, it was decided in the *River Dee, Chester* (*b*), a case under the P.H.A., 1875, that that Act extended to steamboats which make pleasure trips and take passengers for hire or reward. [599]

Powers of Local Authorities.—The earliest general statute now in force dealing with pleasure boats is the P.H.A., 1875. By sect. 172 of that Act (*c*), urban authorities are empowered to license the proprietors of pleasure boats and vessels, and the boatmen or other persons in charge thereof, and to make bye-laws for regulating the numbering and naming of such boats and vessels, and the number of persons to be carried in them, and the mooring places for them, for fixing rates of hire, and the qualification of the boatmen or other persons in charge,

(*a*) 22 & 23 Geo. 5, c. xxxvii.

(*b*) Q.B.D., June 10, 1875, M.S.

(*c*) 13 Halsbury's Statutes 697. Extended to all rural district councils by the Rural District Councils (Urban Powers) Order, 1931; S.R. & O., 1931, No. 580; 24 Halsbury's Statutes 262.

and for securing their good and orderly conduct while in charge. Model bye-laws were issued by the Local Government Board in 1879, and have been brought up to date and are still issued by the M. of H. (d).

Sect. 44 of the P.H.A. Amendment Act, 1890 (e), extended this power of licensing to persons letting pleasure boats for hire on any lake or piece of water in public parks provided by urban authorities, and also empowered urban authorities themselves to provide and let for hire pleasure boats on such lakes and water, and to make bye-laws as provided in the earlier Act. [600]

Sect. 94 of the P.H.A. Amendment Act, 1907 (f), where in force, gives power to the local authority of the district not only to license the boatmen or persons assisting in the charge or navigation of boats or vessels let for hire or carrying passengers for hire, but also each boat, and to charge annual fees for the licences, not exceeding 5s. for a boat or vessel, and 1s. for a boatman or other person assisting in the navigation of the boat or vessel. The licences may be granted for any period that the authority thinks fit, and may be suspended or revoked if necessary or desirable in the interests of the public, provided that the power to do this is set out in the licence itself. By sect. 94 (3) of that Act no one may let for hire any pleasure boat or vessel not licensed, or during the suspension of the licence, and no passenger may be carried for hire on any boat or vessel which is without a licence or whose licence is suspended. A licensee under the section is not, however, required for any boat or vessel which is licensed by, or under any regulation of, the Board of Trade (g). Sub-sect. (5) provides that it is to be specified in the licence how many passengers each boat may carry, and no more than this number may be carried. The section also enacts that the name of the owner of the boat or vessel, and the number of passengers allowed by the licence, must be painted in letters and figures not less than one inch in height and three-quarters of an inch in breadth, on a conspicuous part of the boat under a penalty not exceeding 40s. Any person who considers himself aggrieved by the withholding, suspension or revocation of any licence may appeal to a petty sessional court held after the expiration of two clear days after such withholding, suspension or revocation, but he must give twenty-four hours' written notice of the appeal and the grounds of it to the clerk. The Court may make any order they think fit and award costs, which are recoverable summarily as a civil debt.

It was held in an Irish case under a similar section (h) that although there was no express evidence whether the boundary of a district extended below high water mark, the magistrates were justified in convicting for the offence of plying for hire within the district with an unlicensed pleasure boat. [601]

Private Acts.—Many of the larger rivers are under the care of conservators, whose powers and duties are contained in private Acts.

(d) Series XII. See title MODEL BYE-LAWS AND CLAUSES.

(e) 18 Halsbury's Statutes 841. Extended to rural district councils by the Rural District Councils (Urban Powers) Order, 1931; S.R. & O., 1931, No. 580; 24 Halsbury's Statutes 262.

(f) *Ibid.*, 946.

(g) By the Merchant Shipping Act, 1894, s. 271, and the Merchant Shipping Act, 1906, s. 21; 18 Halsbury's Statutes 261, 452, a Board of Trade Certificate is necessary for passenger steamers and for motor boats carrying for hire more than twelve passengers. See *Yeadall v. Sweeney*, [1922] S. C. (J.) 32; 41 Digest 672, e.

(h) *Feacron v. Warrenpoint U.D.C.* (1910), 44 I. L. T. 265.

In 1932 the various private Acts dealing with the upper reaches of the Thames were consolidated (*i*). In that Act registration takes the place of licensing, and pleasure boats (whether let or intended to be let for hire or not), launches and houseboats are dealt with in separate classes; the charges to be made for registering them and for lock tolls on pleasure boats are set out in schedules to the Act (*k*). By sect. 233 the conservators have power to make bye-laws on the lines of the powers given to local authorities under the P.H.As. already mentioned.

In 1912 a Tees Conservancy Act was passed (*l*) in which power was given to the conservators to make bye-laws on various matters, none of which referred to pleasure boats. In 1920, however, the Act of 1912 was amended by another Act (*m*), sect. 39 of which extended the powers of the conservators and enabled them to make bye-laws prohibiting "Foy boat-men" from plying for hire without a licence, and the use of motor boats without a licence. The section also contains provisions as to suspension and appeal of the same kind as those mentioned in the P.H.A. Amendment Act, 1907, mentioned above. Boats other than Foy boats and motor boats are not dealt with by this Act. [602]

In the Severn Navigation Act of 1914 (*n*), pleasure boats are defined in much the same way as in the Thames Conservancy Act, and under sect. 16 of the Act and sect. 9 of the next mentioned Act, bye-laws may be made for various purposes (*o*) which include regulating the number of persons to be carried on pleasure boats for hire which are not subject to any such regulation under bye-law made by a local authority. By sect. 5 of the Severn Navigation Act, 1920 (*p*), the commissioners are empowered to take in respect of pleasure boats, steam launches and houseboats passing through, by or over any locks on the river, tolls set out in Part II. of the Schedule to that Act. Sect. 8 of the same Act gives to the commissioners the powers of sect. 172 of the P.H.A., 1875 (*q*), and sect. 94 of the P.H.A. Amendment Act, 1907 (*r*), in relation to pleasure boats for hire, their proprietors, and the boatmen or other persons in charge. Moreover, except in so far as a local authority have exercised the powers of those Acts before the passing of the Act of 1920 and continue to exercise them (in which event the commissioners are precluded from doing so) no local authority may exercise those powers in relation to the river after the passing of that Act. [603]

London.—The L.C.C. (General Powers) Act, 1935 (*s*), empowers the L.C.C. and metropolitan borough councils to provide boats for use on waters in open spaces and to make charges therefor (*t*), and to grant by licence to other persons the right to exercise these powers (*u*). The Act contains a saving for open waters belonging to the Metropolitan Water Board or under the control of the Lee Conservators. The London

(*i*) See Thames Conservancy Act, 1932, c. xxxvii.

(*k*) Ss. 139—151 and Scheds. III. and IV.

(*l*) (1912—18), c. lxxvi.

(*m*) (1920), c. xxxvi.

(*n*) (1914), c. xiii.

(*o*) See, for example, the bye-law upheld by the court in *Everton v. Walker* (1927), 91 J. P. 125; 44 Digest 101, 805.

(*p*) (1920), c. xxiv.

(*q*) 18 Halsbury's Statutes 897.

(*r*) *Ibid.*, 946.

(*s*) S. 42; 28 Halsbury's Statutes 151.

(*t*) *Ibid.*, s. 45.

(*u*) *Ibid.*, ss. 43, 45.

Passenger Transport Act, 1933 (a), transferred to the London Passenger Transport Board the powers of running steamboats on the Thames under the Thames River Steamboat Service Acts. The Thames Conservancy Act, 1932 (b), provides for the marking and management of pleasure boats on the Thames. Sects. 139, 140 of that Act provide for the registration of pleasure boats and tolls at locks. Power to make bye-laws is given in sect. 238. The Port of London (Consolidation) Act, 1920 (c), contains provision as to overcrowding of boats. Provisions are also contained in sects. 351—355 of the Act for the registration and licensing of boats in the Port of London, bye-laws as to landings, and other bye-laws (d). **【604】**

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- (a) S. 19 ; 26 Halsbury's Statutes 771.
 - (b) 22 & 23 Geo. 5, c. xxxvii., ss. 91—96.
 - (c) Ss. 329, 330 ; 18 Halsbury's Statutes 694, 695.
 - (d) See ss. 33, 279 ; *ibid.*, 616, 681.

PLEASURE GROUNDS

See GARDENS AND SQUARES ; OPEN SPACES ; PUBLIC PARKS.

PLEASURE STEAMERS

See PLEASURE BOATS.

PLYING FOR HIRE

See HACKNEY CARRIAGES ; LONDON ROADS AND TRAFFIC ; PUBLIC SERVICE VEHICLES.

POISONS

	PAGE		PAGE
INTRODUCTORY - - -	234	HOSPITALS AND INSTITUTIONS	236
LOCAL AUTHORITIES - -	234	APPOINTMENT OF INSPECTORS	236
LISTED SELLERS OF POISONS	234	OFFENCES - - - -	237
RESTRICTIONS ON SALES OF POISONS - - - -	235	LEGAL PROCEEDINGS	237
BREAKING BULK - - -	236	PENALTIES	237
LABELLING, STORAGE AND TRANS- PORT - - - -	236	EXPENSES OF LOCAL AUTHORI- TIES - - - -	237
		LONDON - - - -	237

Introductory.—The only statute conferring powers and duties on local authorities in connection with the sale and storage of poisons is the Pharmacy and Poisons Act, 1933 (*a*). Under sect. 17 (4) of that Act, the official Poisons List (*b*) has been promulgated by the Home Secretary, who has also made the Poisons Rules, 1935 (*c*), under sect. 23 of the Act, and other regulations (*d*). [605]

Local Authorities.—The local authorities concerned with the administration of the Act are the councils of counties and county boroughs, and, in London, the Common Council of the city and the metropolitan borough councils. They are not concerned with Part I. of the Act, which deals with the practice of pharmacy, nor with the sale of poisonous drugs in Part II. of the Poisons List, these being matters for the Pharmaceutical Society of Great Britain, 17 Bloomsbury Square, London, W.C., and for the statutory committee set up under sect. 6 of the Act. The H.O. have issued a series of memoranda dealing with those provisions which concern local authorities (*e*). [606]

Listed Sellers of Poisons.—The local authority is required by sect. 21 of the Act (*ee*) to keep a list of persons, other than pharmacists and similar "authorised" sellers of poisons, who are known as listed sellers and are entitled to sell the poisons in Part II. of the Poisons List in accordance with the Poisons Rules. The list must contain also the prescribed particulars of the premises at which poisons may be sold.

The form of application for inclusion in the list of sellers is prescribed by Sched. IX., and the form of the list itself by Sched. X., to the Poisons Rules. The fees payable to local authorities are 7s. 6d. for an original entry in the list, 1s. for an alteration in relation to the premises of the listed seller, and 5s. for annual retention on the list after the first year. Separate fees are payable in respect of different

(a) 26 Halsbury's Statutes 573.

(b) Poisons List Confirmation Order, 1935; S.R. & O., 1935, No. 1238; 28 Halsbury's Statutes 135; amended by the Poisons List (Amendment) Order, 1937, S.R. & O., 1937, No. 1029.

(c) S.R. & O., 1935, No. 1239; amended by the Poisons List (Amendment) Rules, 1937, S.R. & O., 1937, No. 1030.

(d) Poisons (Approved Institutions) Order; S.R. & O., 1935, No. 1240; Poisons (Appeal to Quarter Sessions) Rules; S.R. & O., 1936, No. 142; Poisons (Colouring) Rules; S.R. & O., 1936, No. 863; Poisons (Amendment) Rules, 1936 (Provisional).

(e) Memo., Poisons No. 1 (Shopkeepers); No. 2 (Wholesalers); No. 3 (Practitioners and Hospitals); No. 4 (Agriculture and Horticulture).

(ee) 26 Halsbury's Statutes 577.

premises in the same ownership or control. The local authority have no discretionary power to refuse a duly made application for inclusion in the list, except for some reason, relating to the applicant personally or to his premises, deemed to render either of them unfit for inclusion (*f*). An appeal against refusal to include a name, or against removal of a name, lies to quarter sessions and rules governing such appeals have been made (*g*).

The list of persons and premises must at all reasonable times be open to public inspection without fee (*h*).

When a person's name is on the local authority's list he may sell, at the listed premises but not elsewhere, any of the poisons in Part II. of the Poisons List, subject to the conditions prescribed by the Poisons Rules. Travelling vans cannot be listed premises, and the hawking of any poison is unlawful, as also is the sale of poison from an automatic machine (*i*).

The local authority should fix the date on which renewals of entries on their list are to be made each year (*k*). [607]

Restrictions on Sales of Poisons.—The Poisons Rules are long and complicated. Some of the principal points only are mentioned here.

Certain industrial commodities are exempt from all restrictions and may be sold by persons who are not "authorised" or "listed" sellers, namely, adhesives; anti-fouling compositions; builders' materials; ceramics; distempers; electrical valves; enamels; explosives; fillers; fireworks; glazes; glue; inks; lacquer solvents; loading materials; matches; motor fuels and lubricants; paints other than pharmaceutical paints; photographic paper; pigments; plastics; propellants; rubber; varnishes (*l*). [608]

The most common articles which listed sellers desire to sell and are permitted to sell include solutions of ammonia, various arsenical compounds, barium carbonate (in rat poisons), hydrochloric acid (spirits of salt), nicotine (in fumigants and insecticides), nitric acid, nitrobenzene (in insecticides), carbolic disinfectants and other liquid preparations containing less than 60 per cent. of phenols, caustic potash, caustic soda, and various poisonous hair-dyes. With regard to ammonia, there are exceptions in favour of smelling bottles, refrigerators, and substances containing less than 5 per cent. of ammonia, all of which may be sold by "unlisted" persons. Substances containing less than 9 per cent. of hydrochloric, nitric or sulphuric acids or less than 12 per cent. of caustic potash or caustic soda may also be sold by anyone. Accumulators, batteries and fire extinguishers containing sulphuric acid and nicotine contained in tobacco are similarly exempted from the Poisons Rules.

On the other hand, the sale of certain poisons is subject to special conditions. Thus, arsenical substances (with certain exceptions) and mercurial substances may be sold only to persons engaged in the business of agriculture or horticulture, and for the purpose of that business. Arsenical and mercurial substances may only be sold in particular types of preparation for use in agriculture or horticulture and in containers

(*f*) S. 21 (1); 26 Halsbury's Statutes 577.

(*g*) Poisons (Appeal to Quarter Sessions) Rules, 1936; S.R. & O., 1936, No. 142; 20 Halsbury's Statutes 275.

(*h*) Pharmacy and Poisons Act, 1933, s. 21 (6); 26 Halsbury's Statutes 578.

(*i*) *Ibid.*, s. 22.

(*j*) *Ibid.*, S. 21 (7).

(*k*) Sched. III. to Poisons Rules; S.R. & O., 1935, No. 1239, as amended (1937).

labelled with a notice of the purpose for which alone they may be used (*m*). Arsenical weed-killers may not be sold by listed sellers. Purchasers of barium silicofluoride, of nicotine, and of arsenical and mercurial substances (unless the proportion of poison in these be quite small) must be known to the seller as a person to whom the poison may properly be sold and must, ordinarily, sign the poisons book when the purchase is made. The only person who may sell this group of poisons is the listed seller himself or a responsible deputy nominated by him to the local authority. Hair-dressers need not be listed if they only use poisonous hair-dyes in their "saloons," but must be listed if they wish to sell preparations containing such poisons as phenylene diamines and toluene diamines. [609]

Breaking Bulk.—Listed shopkeepers may not sell any poisons, other than the mineral acids, ammonia, and salts of lemon, otherwise than in closed containers as closed by the manufacturer or wholesale dealer from whom the poisons have been obtained (*n*). No "breaking bulk" of caustic soda, caustic potash or carbolic disinfectants is permissible. [610]

Labelling, Storage and Transport.—Conditions as to labelling poisons with the name, and in some instances the strength, of the poison, the word "poison" or other prescribed expression, the name of the seller, the address of the premises where the sale is made and certain cautionary phrases are laid down by sect. 18 (1) (c) of the Act and by Nos. 16 to 21 of the Poisons Rules. A sufficient label on the outer cover of a container will ordinarily suffice when sales are made by listed sellers, unless the poison is included in the First Schedule to the Rules, when the label must be on the container as well as the outer covering. Containers must be impervious and sufficiently stout to prevent leakage in the course of handling and transport. Glass bottles containing liquid poisons must be vertically fluted so as to be recognisable by touch. The outside of any package containing any arsenical poison, barium salts or nicotine must when consigned for transport be labelled with the name or description of the poison and an instruction that it must be kept separate from food or empty foodstuff containers. Arsenical and mercurial substances and nicotine may not be stored on a shelf but must be in a cupboard or drawer, reserved for the purpose, or in a special part of the premises to which customers do not have access. [611]

Hospitals and Institutions.—Local authorities maintaining hospitals and similar institutions are free from many of the requirements which govern the supply of poisons to the general public, and may supply poisons to outpatients provided that certain conditions are complied with (*o*). Officers in charge of such hospitals will find those conditions conveniently summarised in H.O. Memorandum No. 8 (Practitioners and Hospitals) issued in 1936. In particular, it is necessary to notice that poisons in public hospitals must be stored in accordance with Rules 27 and 28 of the Poisons Rules, and that poisons may not be supplied to outpatients except in accordance with a prescription of a qualified practitioner (*p*). [612]

Appointment of Inspectors.—It is the duty of local authorities by

(*m*) See Rule 14 (2) (a) and Sched. V., Poisons Rules.

(*n*) R. 14 (1) (a), Poisons Rules.

(*o*) See Poisons (Approved Institutions) Order, S.R. & O., 1935, No. 1240.

(*p*) R. 26, Poisons Rules.

means of inspection and otherwise to take all reasonable steps to secure compliance with Part II. of the Act of 1933 and with the Poisons Rules so far as these relate to articles in Part II. of the Poisons List. The local authority must appoint inspectors, who may be their own officers or may be the inspectors appointed by the Pharmaceutical Society. Inspectors have power to enter premises on the authority's list and any unlisted premises where a breach of the law is suspected. They may buy samples and make inquiries. In particular, they may require a person who appears to be conducting a retail business in drugs to furnish the name of the owner of the business. Inspectors must not be obstructed in their work. They have power, with the general consent of the local authority appointing them, which should be embodied in a formal resolution, to institute and conduct proceedings in courts of summary jurisdiction (g). [618]

Offences.—The principal offences likely to be committed are the following : (1) the sale of poisons by persons not registered as listed sellers or on premises not on the local authority's list ; (2) the sale of "Part I. poisons," particularly rat poisons containing phosphorus, and weed-killers containing arsenic or more than 60 per cent. of phenol, by listed sellers ; (3) the sale of poisons not labelled with the name and address of the seller and the other prescribed particulars ; (4) "breaking bulk" of caustic soda, caustic potash, and carbolic disinfectants ; (5) the sale of preparations of nicotine to persons unknown to the seller, and without making the prescribed entries in the vendor's poisons book ; (6) the hawking of poisons from vehicles on the roads ; (7) obstruction of inspector or failure to give him information ; (8) the sale of poisons in wrong containers, e.g. not in fluted bottles distinguishable by touch. [614]

Legal Proceedings.—In any prosecution, the certificate of a public analyst, or a document purporting to be such a certificate, is admissible as evidence, but either party may require the analyst to be called as a witness. The fact that a defendant is not an authorised seller may be proved by a certificate from the Registrar of the Pharmaceutical Society. The fact that a defendant is not a listed seller should be proved by the production of the local authority's list. Proceedings instituted by a local authority's inspector may be begun at any time within twelve months after the date of the offence. It is no defence to prove that an employee acted without authority, and any material fact known to an employee is deemed to be known to the employer (r). [615]

Penalties.—The penalty for wilfully obstructing an inspector or unreasonably failing to give him required information is a fine not exceeding £5 (s). The penalty for an offence in relation to the sale or storage of poisons is a fine not exceeding £50 and a further fine not exceeding £10 a day for a continuing offence (t). [616]

Expenses of Local Authorities.—Expenses of local authorities are defrayed out of the general rate fund of a borough and in the case of a county council as general county expenses (u). [617]

London.—The metropolitan borough councils and City corporation are local authorities for the purposes of the Pharmacy and Poisons Act, 1933 (a). [618]

- (g) Pharmacy and Poisons Act, 1933, s. 25 ; 26 Halsbury's Statutes 581.
 (r) *Ibid.*, s. 24.
 (s) *Ibid.*, s. 25 (8), (9).
 (t) *Ibid.*, s. 24 (1).
 (u) *Ibid.*, s. 27.
 (a) *Ibid.*, s. 29.

POLICE

	PAGE		PAGE
INTRODUCTORY - - -	238	Medical Attendance - -	244
POWERS OF CONSTABLES - - -	240	MUTUAL AID AGREEMENTS - -	245
Common Law Powers - - -	240	THE POLICE FUND - -	246
Felony - - -	240	Local Authorities - -	247
Breach of the Peace - - -	240	The Central Government - -	247
Police Entry into Premises - - -	240	Miscellaneous Receipts - -	247
Statutory Powers - - -	241	SPECIAL APPOINTMENTS OF CONSTABLES FOR LOCAL PURPOSES	248
ESTABLISHMENT, CONTROL AND ADMINISTRATION - - -	242	River Tyne Police Force - -	248
Ranks and Designations - - -	243	Parish Constables - -	248
Strength - - -	243	Urban Districts - -	248
Appointment - - -	243	Railway Police - -	248
Discipline - - -	244	Harbour and Dock Police - -	249
Promotion - - -	244	Canal and River Police - -	249
Hours of Duty - - -	244	LONDON GENERALLY - -	249
Pay - - -	244	The Port of London Authority - -	249
Allowances - - -	244	Police - - -	249
Clothing, Equipment and Necessaries - - -	244	Park Keepers, etc. - - -	249

See also titles :

BOROUGH POLICE ;
CHIEF CONSTABLE ;
COMMISSIONER OF POLICE ;
COUNTY POLICE ;
METROPOLITAN POLICE ;
METROPOLITAN POLICE DISTRICT ;

POLICE, CITY OF LONDON ;
POLICE PENSIONS ;
SPECIAL CONSTABLES ;
STANDING JOINT COMMITTEE ;
WATCH COMMITTEE.

INTRODUCTORY

The growth of the English police system, like that of most English institutions, has been unplanned, desultory, and informed always by experience, never by prudent anticipation. The system is not intelligible without some knowledge of its origin and history. From early Saxon times the responsibility for keeping the peace, which included the arrest of felons, rested with the local governing unit—township, villa, parish or “tithing,” the latter being a group of ten families in which every freeman over twelve years of age was pledged to ensure the good behaviour of the others. From King Alfred's time (870) an officer specially charged with this duty was elected annually, and he was known as the tithing-man, headborough or constable. His office was honorary, and he was responsible to the sheriff (or shire-reeve) of the county for the maintenance of peace and order by this pledged group of free-men. The sheriff was in turn responsible to the earl of the province. This was a preventive system, by which every freeman was a police officer responsible for the actions of his neighbours, the tithing-man or constable being required to raise the “hue and cry” in the pursuit of any criminal who fled from the district; if the offender escaped all the pledged members were liable to a fine; and if the locality was

too poor, the fine would be collected from the "hundred," which was a grouping of ten "tithings." The system survives in the Riot (Damages) Act, 1886 (*a*), which throws upon local rates (through the police fund) the burden of compensating persons sustaining damage in a riot. In early Norman times the control of police work passed from the freemen to the feudal barons, but the Saxon system was revived in the reign of Henry I. (1100-1135), who moreover sent out itinerant justices to decide cases in the counties and thus brought the Crown into contact with local police. The Assize of Arms (1181) directed that every freeman should bear arms for the purpose of preserving the peace and securing criminals, and the "hue and cry" method was revived and extended. The whole system, after serious lapses, was strengthened by the Statute of Winchester (1285), which moreover established the "watch and ward" in towns, requiring that the gates of walled towns were to be shut at sunset and that a watch of six men was to guard each gate. A borough was to have a watch of twelve persons, and small towns watchmen in proportion to their population. Special provision on similar but more elaborate lines was made for London, which at that time comprised the area now controlled by the City of London Police (*b*). This system continued with little variation for centuries, until in 1673, owing to the defection of the lords of manors whose duty it was to appoint constables at their courts leet, the power of appointing constables annually was transferred from them to the justices. [619]

In the boroughs, watchmen were appointed from early times to supplement or to act in place of the parish constables. But when the boroughs were regulated by the Municipal Corporations Act, 1835, every municipal borough was required to appoint a police force, a provision which was continued and extended by the Municipal Corporations Act, 1882 (*c*). Outside the boroughs the duty of maintaining the peace continued to rest with the parish constables until, in 1829, the first permanent organised force of the modern type was established in the metropolitan police district (*d*), setting a precedent which was followed in the case of the city and borough forces established under the Municipal Corporations Act, 1885.

In 1839 the justices in quarter sessions, who then formed the local administrative body for each county, were empowered by the County Police Act, 1839 (*e*), to establish a paid police force for the county or for any division of it in which the existing police arrangements were considered insufficient. These powers were little used, however, and the establishment of such forces was therefore made obligatory by the County and Borough Police Act, 1856 (*f*). The L.G.A., 1888 (*g*), transferred the control of every county police force to a joint body composed of an equal number of representatives of the justices and the newly-formed county council. [620]

The police forces of England and Wales now, therefore, comprise the Metropolitan Police (with which is associated the City of London Police), sixty county police forces, and 121 city and borough forces. [621]

(*a*) 12 Halsbury's Statutes 844.

(*b*) See title POLICE, CITY OF LONDON, *post*, p. 250.

(*c*) 10 Halsbury's Statutes 576.

(*d*) See title METROPOLITAN POLICE, Vol. IX., p. 152.

(*e*) 12 Halsbury's Statutes 775.

(*f*) *Ibid.*, 812.

(*g*) 10 Halsbury's Statutes 686.

POWERS OF CONSTABLES

Common Law Powers.—The various statutes under which the police forces are established (they are, to a large extent, in common form) contain a provision to the effect that local constables shall have within the district for which they are sworn "all such powers, authorities, privileges, and advantages, and be liable to all such duties and responsibilities, pains and penalties, as any constable duly appointed now has or hereafter may have within his constabulary by virtue of the common law of this realm, and of any statutes made or to be made." The common law powers of arrest are confined to treason, felony and breach of the peace; there is no common law power of arrest for misdemeanour (*h*), even where such an offence occurs within the constable's view. The general common law status of constables is discussed under the title BOROUGH POLICE, Vol. II., p. 191. The following particular rules of conduct have emerged from the decisions in cases occurring within recent years. [622]

Felony.—A constable is justified in arresting a person without a warrant upon a reasonable suspicion of felony having been committed and of the person being guilty of it; the suspicion may be founded on matters within his own knowledge or on statements by another, coming in a way which justify him in giving them credit (*i*). An important difference between the powers of a constable and those of a private person at common law (indeed, almost the only such difference) is the possession by the constable of this power to arrest on suspicion that a felony has been committed—a private person who makes such an arrest is unprotected if it transpires that no such felony has in fact been committed (*k*). [623]

Breach of the Peace.—The general rule is "that for the sake of the preservation of the peace any individual who sees it broken may restrain the liberty of him whom he sees breaking it, so long as his conduct shows that the public peace is likely to be endangered by his acts" (*l*). A constable does not possess, nor does he need, a wider power than this in respect of the preservation of the peace. He cannot arrest without a warrant after the affray is over, unless there are reasonable grounds for apprehending its continuance or immediate renewal (*m*). The numerous cases governing arrest by constables of persons obstructing them in the execution of their duty appear to show that the principle of maintaining the peace is the paramount consideration which will justify such arrests (*n*). [624]

Police Entry into Premises.—When a police officer, not armed with a warrant, enters private premises in pursuing reasonable inquiries he is not a trespasser, but is acting in the execution of his duty; but if he remains there after the occupant of the premises has requested

(*h*) *Colman v. Griffin* (1859), 23 J. P. 327; 14 Digest 176, 1536.

(*i*) *McArdle v. Egan* (1934), 98 J. P. 103; Digest Supp.

(*k*) *Walters v. Smith (W. H.) & Son, Ltd.*, [1914] 1 K. B. 505; 78 J. P. 118; 14 Digest 177, 1549.

(*l*) *Timothy v. Simpson* (1835), 4 L. J. (Ex.) 81; 14 Digest 179, 1577.

(*m*) *Baynes v. Breaster* (1841), 2 Q. B. 375; 14 Digest 179, 1578; *R. v. Light* (1857), 27 L. J. (M. C.) 1; 14 Digest 180, 1586; *R. v. Marsden* (1868), L. R. 1 C. C. R. 181; 14 Digest 180, 1588.

(*n*) See *Duncan v. Jones*, [1926] 1 K. B. 218; 99 J. P. 390; Digest Supp.; *Despard v. Wilson* (1910), 74 J. P. 115; 22 Cox, C. C. 258, D. C.; 15 Digest 710, 7650; *Pankhurst v. Jarvis* (1910), 74 J. P. 64; 26 T. L. R. 118; 15 Digest 710, 7679.

him to leave he becomes a trespasser and an assault committed upon him in ejecting him from the premises is not an assault upon a police officer in the execution of his duty (*o*). But a police officer has, *ex virtute officii*, a right to enter and remain on private premises if he has reasonable grounds for believing that an offence or breach of the peace is likely to be committed theron, his right of entry not being confined to cases where an offence or breach of the peace is being, or has been, committed (*p*). [625]

Statutory Powers.—The statutory powers of constables have received some judicial attention in recent years. The trend of modern penal legislation is to emphasise the method of information and summons or warrant, rather than that of arrest without warrant. An outstanding case is that of *Ledwith v. Roberts* (*q*), a Court of Appeal case in which two Liverpool constables, who had arrested two unknown men as "suspected persons or reputed thieves loitering for the purpose of committing a felony" within the meaning of sect. 4 of the Vagrancy Act, 1824 (*r*), were successfully sued for wrongful imprisonment on the ground that that section applied only to persons who belonged, antecedently to the occasion of their arrest, to a definite class of "suspected persons" or "reputed thieves" (*s*). The defendants sought in the same case to place reliance on the provisions of sect. 513 of the Liverpool Corporation Act, 1921, which, in common form with a provision in many other police Acts, provides that a constable may arrest without a warrant . . . "(2) Any loose, idle, or disorderly person . . . whom he shall have good cause to suspect of having committed or being about to commit any felony, misdemeanour or breach of the peace . . . (3) Any person whom he shall find between sunset and the hour of eight in the morning lying or loitering in any street, yard, or other place and not giving a satisfactory account of himself." The court held that to justify arrest under sub-sect. (2) of this section it must be established that the person arrested belongs to the category or class of loose, idle and disorderly persons—class which, said SCOTT, L.J., in his judgment, has ceased to exist; and that "loitering" in sub-sect. (3) means idling in such a way as to indicate that the person in question was idling in the street or other place for some unlawful purpose. The numerous local variations in this important provision of the Police Acts led SCOTT, L.J., to say that "crime and personal liberty ought not to vary from town to town as must be the case if they are to depend on municipal variations in 'local and personal' Acts of Parliament"; and that "a local Act dealing with a topic also covered by general public statutes ought, in case of ambiguity in the local Act, to be construed in the light of the general law of the land." [626]

In *R. v. Dean* (*t*) it was held that the provisions of sect. 4 of the Vagrancy Act, 1824 (*u*), as to suspected persons loitering, etc., were not intended as a convenient method of supplying a hiatus in the evidence of felony. [627]

(*o*) *Davis v. Lisle*, [1936] 2 K. B. 434; [1936] 2 All E. R. 213; 100 J. P. 280; Digest (Supp.).

(*p*) *Thomas v. Sawkins*, [1935] 2 K. B. 249; 99 J. P. 295; Digest (Supp.).

(*q*) [1937] 1 K. B. 232; [1936] 3 All E. R. 570; Digest (Supp.).

(*r*) 12 Halsbury's Statutes 915.

(*s*) But see also *Hartley v. Elthor* (1917), 81 J. P. 201; 86 L. J. (K. B.) 938; 37 Digest 364, 1659, and *Rawlings v. Smith*, [1938] 1 K. B. 675; [1938] 1 All E. R. 11; Digest (Supp.).

(*t*) (1924), 18 Cr. App. Rep. 133, C. C. A.; Digest (Supp.).

(*u*) 12 Halsbury's Statutes 915.

By the Road Traffic Acts, 1930 to 1934, and regulations made thereunder, constables are empowered to stop and direct vehicular traffic, to inspect vehicles, to demand the production of driving licences and certificates of insurance, and to arrest without warrant (i) any person driving a motor vehicle while under the influence of drink or a drug to such an extent as to be incapable of having proper control, (ii) any person taking and driving away a motor vehicle without the consent of the owner or other lawful authority, (iii) any person driving a motor vehicle recklessly, dangerously or carelessly, who refuses either to give his name and address or to produce his driving licence. [628]

In general, the statutory powers of a constable are defined with some particularity in the statute creating the offence for which the arrest may be made. Where no such power is given by the statute and none exists at common law, it must be concluded that prosecution is intended to be by way of information for a summons or warrant. This is the position regarding most offences punishable upon summary conviction, and with regard also to a great number of indictable misdemeanours. [629]

It may be added that every constable in England and Wales, whether of a borough, city or county force, has a clearly prescribed area of jurisdiction, beyond the limits of which he is not a constable unless specially sworn. This disability, however, leaves untouched his powers as a private individual in all districts, and difficulties arising from it are rare. [630]

ESTABLISHMENT, CONTROL AND ADMINISTRATION

The police authorities and funds responsible for the several kinds of police force are set out in the Third Schedule to the Police Pensions Act, 1921, as follows :

ENGLAND AND WALES.

POLICE AREAS AND AUTHORITIES.

Police Area.	Police Authority.	Chief Officer of Police.	Police Fund.
The City of London as defined for the purposes of the Acts relating to the City Police. The Metropolitan Police District.	The Common Council.	The Commissioner of City of London Police.	The funds out of which the expenses of the City Police are paid.
A county.	One of His Majesty's Principal Secretaries of State. The standing joint committee of the quarter sessions and the county council.	The Commissioner of Police of the Metropolis. The chief constable.	The Metropolitan Police Fund. The county fund.
A borough.	The watch committee.	The chief constable.	The borough fund or borough rate or any fund or rate applicable under any local Act for the expenses of the police force.

Police Area.	Police Authority.	Chief Officer of Police.	Police Fund.
The River Tyne.	The Tyne Improvement Commissioners.	The superintendent or other officer having the chief command of the police.	The tonnage rates and dues and other sums applicable under the Acts relating to the improvement of the River Tyne for the expenses of maintaining the police force.

These are local forces, each exercising jurisdiction within its own district, each with its own police authority responsible for the maintenance of the force, and each with its own chief officer. They are, however, linked together by (i) the supervisory powers of the Home Secretary—exercised through his department, through H.M. Inspectors of Constabulary, and through the Director of Public Prosecutions, by advice, guidance and information on matters affecting police work and administration; and (ii) the police regulations made under sect. 4 of the Police Act, 1919 (a), with which every police authority must comply, and of which the following are the chief provisions. [631]

Ranks and Designations.—The ranks of a police force shall be known by the following designations: Chief Constable (except when the title Head Constable is used), Superintendent, Inspector, Sergeant, Constable. In forces where varying degrees of responsibility render intermediate ranks necessary, one or more of the following ranks may be retained or adopted as the case may be, subject, in each case, to the approval of the Secretary of State: Assistant Chief Constable, Chief Superintendent, Chief Inspector, Sub-divisional Inspector, Sub-Inspector, Station Sergeant, Acting Sergeant (Regs. 1 to 4). [632]

Strength.—The authorised establishment of the several ranks and any changes thereof in every police force shall be subject to the approval of the Secretary of State (Regs. 5 and 6). [632]

Appointment.—A candidate for appointment to a police force must produce satisfactory references as to character, must be under thirty or, in case of an appointment as chief officer of police, forty years of age, must not be less in height than 5 feet 8 inches or any higher standard locally prescribed, must be certified fit by the medical officer of the force, and must pass (or produce certain evidence exempting him from) an educational examination. A person may not be appointed while he, or his wife, carries on any business or holds any licence under the liquor licensing laws. Appointments as chief officers of police in counties and boroughs are subject to the approval of the Secretary of State. A constable joining after 30 September, 1931, is on probation for two years, subject to certain exceptions, and during that period the chief officer of police may dispense with his services at any time on the grounds that he is not physically or mentally fit, or not likely to become an efficient and well-conducted constable. (Regs. 7 to 11.) [634]

(a) 12 Halsbury's Statutes 868.

Discipline.—A code of offences against discipline is appended to the regulations. Its publication to the members of every force is compulsory, and it may be added to by the police authority with the approval of the Secretary of State. The form of disciplinary procedure and the punishments which may be awarded are prescribed at length. (Regs. 12 to 26.) [685]

Promotion.—Promotion up to the rank of inspector, though by selection, is subject to qualifying examinations in police duties and educational subjects, the scope of which is prescribed. (Regs. 27 to 32.) [686]

Hours of Duty.—A normal daily duty period of 8 hours is prescribed with an interval of 30 minutes for refreshment where the duties are performed in one tour of 8 hours. Money allowances or leave are provided for in compensation for extra periods of duty. (Regs. 38 to 40.) [687]

Pay.—Two scales of pay for constables are in operation at present (1987), referred to as Scale A and Scale B. Under Scale A, constables who joined before 30 September, 1981, commence at 70s. weekly and rise by annual increments of 2s. per week to 90s. weekly on completing 10 years' service. Under Scale B, constables joining after 30 September, 1981, commence at 62s. weekly and rise by varying increments to 90s. weekly on completing twelve years' service. Special (non-pensionable) increments for long service and efficiency are provided for in the case of constables.

The pay for sergeants (Scale C) commences at 100s. weekly on promotion and rises by annual increments of 2s. 6d. per week to 112s. 6d. weekly on completing five years in the rank.

The pay of members of a police force of and above the rank of inspector is not prescribed by the regulations, but is determined by a system of local grading approved as respects each locality by the Secretary of State. (Regs. 47 to 52.) [688]

Allowances.—Non-pensionable allowances are made for rent (where free quarters are not provided), uniform (where, as in the case of certain ranks above that of inspector, uniform is not supplied), boots (where not supplied), wear of plain clothes for duty purposes, detective duties, subsistence, lodging and refreshment in the case of police officers temporarily absent from their own police districts, detachment duty in the case of police officers lent in aid of another police force, extra duty—*i.e.*, certain specified duties under Acts relating to animals, shops, public health, etc., and temporary performance of the duties of a higher rank. (Regs. 64 to 77.) [689]

Clothing, Equipment and Necessaries.—The regulations require that police authorities shall provide for all ranks the uniform, clothing and equipment necessary for the performance of police duty, unless in the case of officers of and above the rank of inspector a money allowance is paid in lieu. The nature of the uniform and equipment to be provided to sergeants and constables, with the period of wear for each article, is prescribed. Provision is also made for the sale of cast-off clothing. (Regs. 78 to 86.) [640]

Medical Attendance.—Police authorities are required to provide for members of a police force free medical attendance either by a medical

officer for the force or by another medical practitioner approved by the police authority. This includes the provision of medicines and drugs where necessary, and, on the certificate of the medical officer, free hospital or other special treatment and free dentures and dental treatment. Certain stoppages from pay during a period of sickness are authorised, except where the illness is contracted or the injury sustained while the officer is on duty. (Regs. 87 to 89A.) [641]

MUTUAL AID AGREEMENTS

The principle of local autonomy in police administration produced certain difficulties on occasions of a national character, and these were largely resolved by a scheme of "mutual aid agreements" established under sect. 25 of the Police Act, 1890 (b), after conferences between the H.O., the County Councils Association and the Association of Municipal Corporations. The scheme secures uniformity in the terms on which police are lent from one force to another, and at the same time removes all occasion for agreements between individual forces, apart from loans of men on special terms for particular (not national) occasions. The scheme does not, however, bind any police authority to lend men in any given circumstances; it merely fixes the payments to be made and conditions to be observed if and when it is decided to lend men from one force to another.

Police authorities have power, under sect. 25 (3) of the Police Act, 1890 (b), to delegate to the chief officer of police the decision whether a detachment of the force should be lent to another force on any particular occasion. [642]

The agreement has been adopted by every police authority in England and Wales. For the purpose of computing the payment due from the "aided" police authority, the period of employment of the borrowed constables is taken to commence from the time when such constables leave their stations and to continue until they return to their stations, any part of a day being reckoned as a whole day. The additional constables are under the command of the chief officer of the aided force. The "aided" authority undertake to pay to the "aiding" authority (i) the amount of the pay of the borrowed constables *plus* 12½ per cent. of the total of such pay, but less any supplementary deductions made by Police Regulations; (ii) the allowances due, according to the Police Regulations, to the borrowed constables, i.e. for detachment duty, detective duty, plain clothes duty, and (where food and lodging are not provided) subsistence and lodging; (iii) the amount of any bonus due under the regulations of the "aiding" force; (iv) travelling expenses and carriage of horses; and (v) £1 per day for each horse borrowed and an agreed sum for the loan of vans (the "aided" authority to provide stabling and forage for horses). In the event of a borrowed constable being killed or incapacitated for duty while acting under the agreement, the proportion of any pension, gratuity or allowance payable to such constable or his dependants is settled by agreement as between the two police authorities. Compensation may be agreed upon in respect of the death or injury of a borrowed horse, or of damage to any vehicle or saddlery. The aided authority undertakes to indemnify the borrowed constables against all actions, costs or damages to which they may become liable in respect

of acts done by them while acting as constables under the scheme. Disputes of any kind arising out of the agreements are referred to the Secretary of State, whose decision is final.

By sect. 25 (1) of the Police Act, 1890 (c), any constables lent under such an agreement acquire, for the relevant period, all the powers, duties and privileges of constables of the aided force. [643]

During a colliery strike in Glamorganshire, riots took place with which the county police were unable to cope. The chief constable applied for military assistance, but the Home Secretary sent instead a body of metropolitan police constables. Other police authorities also supplied constables under aiding agreements in force at the time (1916) which provided that the aided county should pay for their board and lodging ; this, however, was provided by the colliery owners at the request of the chief constable. In an action brought by them against the standing joint committee and the county council to recover their expenses, it was held the defendants were not liable in respect of the metropolitan police because they had not asked for their assistance, but that they were liable for the expenses incurred in respect of the other imported police (d). [644]

The council of a borough which maintains a separate police force is entitled under sect. 24 (2) (j) of the L.G.A., 1888 (e), to be paid by the county council one-half of the cost of the pay and clothing of constables belonging to another police force who have been temporarily added to the borough police force by agreement under sect. 25 of the Police Act, 1890 (f). [645]

THE POLICE FUND

Each police force now has its police fund from which all payments for police purposes are made ; and which derives its income from several sources. Sect. 80 and the Third Schedule of the Police Pensions Act, 1921 (g), defines this police fund, the Second Schedule of the same Act mentions some sources of its income, and the following persons are responsible for it in their respective areas :

The Receiver for the Metropolitan Police District is appointed by the Crown and is in charge of the Metropolitan Police Fund (h), being responsible to the Secretary of State who is the police authority. The Common Council of the City of London is the police authority for that City and controls the funds out of which the expenses of the City police are paid. The treasurer of a county is responsible for the police fund of his county and payments are made from it on the requisition of the standing joint committee of quarter sessions and the county council, which is the police authority. [646]

In a borough with its own police force, the borough treasurer manages the police fund, which in effect is a branch of the general rate fund and is administered by the watch committee of the borough council, the council being the police authority. [647]

The sources of income of the police fund of a police force are as

(c) 12 Halsbury's Statutes 850.

(d) *Glamorgan Coal Co. v. Glamorganshire Standing Joint Committee*, [1916] 2 K. B. 206, C. A. ; 37 Digest 185, 79.

(e) 10 Halsbury's Statutes 705.

(f) *R. v. West Riding County Council*, [1895] 1 Q. B. 805 ; 37 Digest 185, 78.

(g) 12 Halsbury's Statutes 888, 894.

(h) Metropolitan Police Act, 1829, s. 10 ; 12 Halsbury's Statutes 747.

follows : (1) the local authority, which is bound to allocate an amount from the rates, sufficient to pay all the police expenses of their district, after taking into account the moneys received from any other sources ; (2) the central government, which pays half the expenses necessarily incurred for purely police purposes ; (3) miscellaneous receipts. [648]

Local Authorities.—Sect. 23 of the Metropolitan Police Act, 1829 (*i*), authorises the Commissioner of the Metropolitan Police, with the approval of the Secretary of State, to issue his warrant to the overseers of the poor (now rating authorities (*j*)) to levy a rate for the purposes of the police. This police rate was first limited to 8d. in the £, but was increased in amount by later statutes.

The L.G.A., 1888 (*k*), transferred the powers of justices as to the levying of a police rate to the county councils.

Sect. 197 of the Municipal Corporations Act, 1882 (*l*), authorised the levying of a watch rate not exceeding in any year 8d. in the £, and the money raised by this rate should go to the borough fund, which is liable to make good any deficiency of the watch rate towards the expenses of the police.

Sect. 7 of the Police Act, 1919 (*m*), abolished all limits imposed by any statute, whether public, general or local, on any rate which may be raised for the purposes of the police. [649]

The Central Government.—As from 31 March, 1930, local authorities receive from the H.O. a police grant equal to one-half of the total net approved expenditure on purely police purposes. This grant comes from the police vote, as voted annually by Parliament, and is distinct from the new general Exchequer grant in aid of local expenditure which was instituted and is regulated by the L.G.A., 1929 (*n*). A certificate of efficiency is not now required (as was necessary under the County and Borough Police Act, 1856 (*o*)), but the payment of the grant is subject to the conditions laid down in rules made by the Secretary of State on 24 October, 1919, and the claim for grant based on the police accounts is subject to verification by the district auditors of the M. of H. The Secretary of State may withhold the police grant in whole or in part if he is not satisfied that the police service is efficiently and properly administered or if his approval has not been obtained for the rates of pay and allowances of the force. The grant is calculated only on expenses actually incurred for police purposes, as approved by the Secretary of State, and does not apply to services not strictly in the nature of police duty. For example, expenses in connection with the fire brigade, the inspection of weights and measures, the administration of justice (such as the maintenance of police courts) will not count for the grant. Thus, the cost of police, once payable entirely out of the rates, is now partly defrayed from the national Exchequer. [650]

Miscellaneous Receipts.—Certain other moneys payable to the police fund, e.g. rateable deductions from the pay of members of a police force, certain fines imposed by courts of summary jurisdiction, various fees payable for police services, and proceeds of sales of old

(*i*) 12 Halsbury's Statutes 751.

(*j*) R. & V.A., 1925, s. 1 ; 14 Halsbury's Statutes 617.

(*k*) 10 Halsbury's Statutes 686.

(*l*) *Ibid.*, 638.

(*m*) 12 Halsbury's Statutes 869.

(*n*) See Vol. VI., p. 202.

(*o*) 12 Halsbury's Statutes 812.

uniform and stores, etc., are provided for in the Police Pensions Act, 1921 (see title POLICE PENSIONS, *post*, p. 258). [651]

SPECIAL APPOINTMENTS OF CONSTABLES FOR LOCAL PURPOSES

Several special or general Acts provide for the appointment of constables for local purposes.

River Tyne Police Force.—The Tyne Improvement Act, 1852 (*p*), as amended by subsequent enactments, provides for the appointment of a force of constables to police the River Tyne district within the limits of the Act. The police authority (the Tyne Improvement Commissioners) receive no Exchequer contribution and the force is not subject to Government inspection; but the provisions of the Police Pensions Acts, 1921 and 1926, and the police regulations, apply to it. [652]

Parish Constables.—The Lighting and Watching Act, 1883 (*q*), may be adopted by a parish meeting in a rural parish under sect. 7 of the L.G.A., 1894 (*r*). It then authorises the appointment, for the protection of the inhabitants and their property, of a body of watchmen who are to be sworn in as constables and possess all the powers and privileges of constables. It does not appear that there are now any forces established under this Act, which is regarded as inoperative. [653]

The Parish Constables Acts, 1842 and 1872 (*s*), also authorise the appointment of constables for a parish when quarter sessions have by resolution determined that such appointment is necessary (*t*). Such constables are appointed by the justices in petty sessions under the Act of 1842, and are subject to the authority of the chief constable; but the purpose of the Act of 1872 was "to render unnecessary the general appointment of parish constables" owing to the establishment of county police forces, and it appears that their continued appointment was even at that time considered undesirable except in emergencies. [654]

Urban Districts.—The Town Police Clauses Act, 1847 (*u*), is also adoptive. It applies (so far as concerns its police provisions) to towns to which its provisions have been extended by a special (usually a local) Act of Parliament. It is discussed under the title BOROUGH POLICE, Vol. II., p. 184. [655]

Railway Police.—The Railway Regulation Acts, 1840 and 1842 (*a*), the Railways Clauses Consolidation Act, 1845 (*b*), and the Regulation of Railways Act, 1889 (*c*), provide for the protection of railway property, the proper discharge of the duties and responsibilities of railway undertakings, the making of bye-laws in that behalf, and the exercise of police powers by constables specially appointed to police railway premises. Each of the main railway systems has its own police force, the members of which are sworn as constables before justices. They have power to arrest without warrant any person travelling or attempting to travel without having paid his fare and with intent to avoid

(*p*) 15 & 16 Vict., c. cx.

(*g*) 8 Halsbury's Statutes 1186.

(*r*) 10 Halsbury's Statutes 779.

(*s*) 12 Halsbury's Statutes 797, 831.

(*t*) Parish Constables Act, 1872.

(*u*) 12 Halsbury's Statutes 804.

(*a*) 14 Halsbury's Statutes 13, 17.

(*b*) *Ibid.*, 30.

(*c*) *Ibid.*, 246.

payment ; or wilfully proceeding beyond the distance for which he has paid his fare, with intent to avoid payment ; or wilfully refusing to quit a carriage on arriving at the point to which he has paid his fare ; or obstructing an officer or agent of the railway company in the execution of his duty ; or wilfully trespassing upon the railway, stations or works, and refusing to quit upon request of such officers or agents. But so far as concerns prosecutions brought by way of arrest without warrant, the railway forces have no machinery for the charging and detaining of prisoners, and therefore deliver such offenders into the custody of the local county, borough or city police. [656]

Harbour and Dock Police.—Sect. 47 of the Harbours, Docks and Piers Clauses Act, 1847 (*d*), provides that two justices may appoint persons to be constables within, and within one mile of, the limits of any harbour, dock, or pier undertaking authorised by Act of Parliament. Such constables when sworn in have all the powers, protections and privileges within the said limits, and are subject to the same liabilities, as constables have or are subject to by the laws of the realm. [657]

Canal and River Police.—Sect. 1 of the Canals (Offences) Act, 1840 (*e*), provides that any two justices, and the watch committee of an incorporated borough, on the application of the board of directors of any canal or navigable river, may appoint persons to act as constables on and along such canal or river. Such constables, when sworn, have all the powers, protections and privileges of constables on the canal or river, on the towing path and works belonging thereto, and on any railways, tramroads, wharves, quays, docks, warehouses and lands belonging to the company, and in places not more than a quarter of a mile distant from any such place ; with the exception that they cannot so act within the metropolitan police district, the City of London, or any places beyond their companies' premises in any city or incorporated borough. [658]

LONDON GENERALLY

(See also titles COMMISSIONER OF POLICE ; METROPOLITAN POLICE ; POLICE, CITY OF LONDON.)

The Port of London Authority Police.—Sect. 285 of the Port of London (Consolidation) Act, 1920 (*f*), empowers the Port of London Authority to procure all or any of their officers and servants to be sworn in as constables for counties adjoining the River Thames, or for boroughs and towns adjoining the Thames which maintain separate police forces. Moreover, metropolitan and county police authorities are empowered by sect. 286 of the Act to provide police at the request of the Port of London Authority on such terms as may be agreed. [659]

Park Keepers, etc.—The L.C.C. (General Powers) Acts, 1890, sects. 17 and 18 (*g*) ; 1919, sect. 9 ; and 1925, sect. 25 (*h*), empower the L.C.C. to procure any of their officers to be sworn in as constables to enforce bye-laws regarding parks and open spaces. Officers so authorised may not act as constables unless in uniform or armed with

(*d*) 18 Halsbury's Statutes 61.
(*f*) 18 Halsbury's Statutes 684.
(*h*) *Ibid.*, 1378.

(*e*) 12 Halsbury's Statutes 782.
(*g*) 11 Halsbury's Statutes 1019.

a warrant. By sect. 46 of the L.C.C. (General Powers) Act, 1935 (*i*), the provisions of sects. 17 and 18 of the 1890 Act (*supra*) are applied to the council and to metropolitan borough councils in respect of bye-laws under the 1935 Act. [660]

(*i*) 28 Halsbury's Statutes 153.

POLICE, CITY OF LONDON

	PAGE		PAGE
INTRODUCTORY - - - - -	250	CO-OPERATION WITH METROPOLI-	
ORGANISATION - - - - -	250	TAN POLICE - - - - -	251
EXTENT OF AUTHORITY OF CITY OF LONDON POLICE - - - - -	251	POWERS OF CITY CONSTABLES - - - - -	252
		FINANCE - - - - -	252
		RIOT DAMAGES - - - - -	252

*See also titles : METROPOLITAN POLICE ;
POLICE.*

Introductory.—The City of London Police, an "island" force policing the "square mile" of the City of London, is of ancient origin. Its history may be traced, without gaps, to the early "watch and ward" system regularised, if not established, by a statute passed in 1285, the thirteenth year of Edward I., entitled "Statutum Civitatis London." The watch and ward system was extended by an Act of Common Council in 1698, and again by an Act of Parliament in 1797 (*a*) "for better regulating the Night Watch and Bedels within the City of London and Liberties," etc. The establishment of the Metropolitan Police Force in 1829 (*b*) resulted in a Government proposal, in 1839, to amalgamate the two forces; but on a petition to the Crown the Court of Common Council of the City succeeded in preserving their ancient right of policing the City, upon condition that they promoted a Bill to adopt the major principles of the Metropolitan Police Act and ensure the desired uniformity. The City of London Police Act, 1839 (*c*), which was then passed, is the Act which still governs the administration of the force. The Police Act, 1919 (*d*), introduced a measure of H.O. control and inspection, together with an annual grant from the national Exchequer. The police authority is the Court of Common Council, who, by virtue of the City of London Police Act, 1839, appoint a police committee, consisting of the aldermen and deputies of the twenty-five City wards together with twenty-nine commoners. [661]

Organisation.—The force is controlled by a commissioner appointed by the Lord Mayor, aldermen and commons of the City of London

(*a*) 10 Geo. 2, c. 22.
(*c*) 2 & 3 Vict. c. xciv.

(*b*) See title METROPOLITAN POLICE.
(*d*) 12 Halsbury's Statutes 867.

in pursuance of sect. 3 of the City of London Police Act, 1839 (*e*), subject to the approval of his Majesty as signified by the Secretary of State. The Commissioner, in turn, makes all appointments to the force under sect. 9 of the same Act, the various ranks being as follows : assistant commissioner, chief superintendent, superintendents, chief inspectors, inspectors, sub-inspectors, sergeants and constables. He also makes regulations under sect. 14 for the government of the force subject to the approval of the Court of Mayor and Aldermen and the Secretary of State. He is solely responsible for the discipline of the force. The City is divided, for police purposes, into four districts, each controlled by a division of the force under a chief inspector. A fifth division comprises the clerical and administrative staff at the headquarters at 26, Old Jewry, and the detective department which supplies detective officers to the other four divisions. [662]

Extent of Authority of City of London Police.—Members of the City of London Police Force have all the powers and duties of constables within the City of London "and the liberties thereof." The "liberties" were, originally, those parts of the present-day City of London that lay outside the boundary formed by the Roman wall and the river Thames. They are now all included in the expression "City of London" with the exception of the Ward of Bridge Without. This is an area on the south side of the river Thames slightly larger than the borough of Southwark, which it includes. Its association with the City is now purely formal; it is included in the metropolitan police district by the Metropolitan Police Act, 1829 (*f*), and it is treated, for police purposes, as being out of the City. All the Thames bridges within the eastern and western limits of the City are, by various special Acts, included in the City of London. The river Thames itself, within those limits, is policed by the Thames division of the metropolitan police. [663]

Constables of the City of London Police Force may at the request of the Secretary of State, in any case of special emergency, be authorised by the Lord Mayor to act within the metropolitan police district, and *vice versa* (*g*). In the absence of such special authorisation, constables of the City force have no powers, as constables, in the metropolitan police district. The services of City of London constables may also be lent in case of emergency to other police forces, and *vice versa*, in pursuance of "mutual aid agreements" (*h*) between the police authorities concerned, under the general powers given by sect. 25 of the Police Act, 1890 (*i*), and in accordance with regulations made under sect. 4 of the Police Act, 1919 (*j*). [664]

Co-operation with Metropolitan Police.—City of London police stations function as metropolitan police stations for purposes relating to lost and found property, property found in public carriages, and reports of property stolen or suspected to be stolen. A close liaison is maintained in the investigation of crime and kindred matters, and this is enhanced by means of a ring of 50 intercommunicating street telephone boxes in the City on and near the boundary, keys of which are carried by the metropolitan as well as by the City police. The

(*e*) 2 & 3 Vict. c. xciv.

(*f*) 12 Halsbury's Statutes 743.

(*g*) 2 & 3 Vict. c. xciv., s. 24.

(*h*) See "Mutual Aid Agreements" in title POLICE, *ante*, p. 245.

(*i*) 12 Halsbury's Statutes 850.

(*j*) *Ibid.*, 868.

City police headquarters office is also connected by telephone directly with New Scotland Yard. [665]

Powers of City Constables.—In addition to the general common law (*k*) and statutory (*l*) powers, a City of London police constable has special powers of arrest for "street offences" under the City of London Police Act, 1839, the City of London Sewers Act, 1848, the Metropolitan Streets Act, 1867, and certain local Acts and bye-laws applying in some cases to London as a county and in others to the City area alone. [666]

Finance.—The expenses of the City of London Police Force, including salaries, wages and pensions (*m*) of members of the force and of persons employed in connection with the force, are defrayed out of the City of London police fund, which is administered by the Chamberlain of London at the Guildhall. One quarter of the sum required was originally supplied from City revenues and three-quarters from a police rate, but this was discontinued by the City of London (Various Powers) Act, 1920, sect. 14. Roughly four-fifths of the fund is now supplied from a general rate, and the remainder by the Government grant voted annually by Parliament. The general rate is levied by the Court of Common Council (*n*) and collected in manner prescribed by sect. 79 of the City of London Police Act, 1839. Sects. 58 to 78 of the latter Act prescribe the method of rating and assessment; and sect. 66 authorises the rating, for police fund purposes, of unoccupied premises. Fines imposed for offences under the Act of 1839 may be paid into the police fund. [667]

Riot Damages.—The Court of Common Council is the police authority of the City of London for the purpose of settling claims for compensation for damage by riot, which are payable out of the police rate (*o*). [668]

(*k*) See 2 & 3 Vict. c. xciv., s. 9.

(*l*) See under titles BOROUGH POLICE, Vol. II., p. 184, and COUNTY POLICE, Vol. IV., p. 109.

(*m*) Police Pensions Act, 1921, s. 26; 12 Halsbury's Statutes 886.

(*n*) City of London (Union of Parishes) Act, 1907, s. 15; 14 Halsbury's Statutes, 605.

(*o*) Riot (Damages) Act, 1886, s. 9, Sched. I.; 12 Halsbury's Statutes 847, 848.

POLICE PENSIONS

	PAGE		PAGE
THE PRINCIPAL ACT	253	APPROVED SERVICE	259
POLICE AUTHORITIES	253	Definition	259
FINANCE	254	Service in another Force	259
RETIREMENT	254	Rejoining Member	260
MEMBERS' PENSIONS	254	Interchange	260
Ordinary Pension	254	Reserve Forces	260
Assured Pension	254	Service in Respect of Pension	
Special Pension	255	Period	260
Double Pension	255	DEDUCTIONS FROM PAY	260
Scales of Pensions	255	MEDICAL EXAMINATION AND	
WIDOWS' PENSIONS	257	ATTENDANCE	261
Ordinary Pensions	257	SPECIAL CONSTABLES	261
Widow's Special Pension	257	INCIDENTS OF PAYMENTS	262
Widow's Pension General Rules	257	REGULATIONS OF POLICE	
CHILDREN'S ALLOWANCES	257	AUTHORITY	262
GRATUITIES	258	APPEALS	262
To a Member	258	FIRE POLICE	262
To a Widow	258	PENSIONS (INCREASE) ACTS	263
To a Child	258	INCOME TAX	263
To a Relative	258	LONDON	264
Gratuity General Rules	259		

See also title : SUPERANNUATION.

The Principal Act.—The Police Pensions Act, 1921 (*a*), part of the legislation passed immediately after the War with the object of integrating the police service on a national basis while maintaining considerable local responsibility, substantially governs eligibility for and amount of pensions, gratuities and allowances to members of a police force, their widows, children and dependants. Many of the statutory provisions give effect to recommendations contained in Part II. of the Report of the Desborough Committee (*b*). Earlier general or local Acts or charters have been superseded, and comprehensive provisions applied to members of a police force who were serving on August 28, 1921, although the customary practice has been followed in certain respects of preserving powers of police authorities and rights of individuals as existing under superseded enactments. Policewomen (*c*) and members of a police force engaged wholly or partly upon fire brigade duties are within the scope of the Act of 1921. [669]

Police Authorities.—For the present purpose these are the Common Council in the City of London, the Secretary of State for Home Affairs in the Metropolitan Police District (*d*), the standing joint committee

(*a*) 12 Halsbury's Statutes 873. For the general law on the subject, see 25 Halsbury (2nd ed.), 344.

(*b*) Committee on the Police Service of England, Wales and Scotland, Cmd. 574, 1920.

(*c*) Subject to modifications set out in Police Pensions Act, 1921, s. 28.

(*d*) See title METROPOLITAN POLICE DISTRICT, Vol. IX., p. 156.

of the quarter sessions and the county council in an administrative county, the watch committee in a borough and the Tyne Improvement Commissioners as regards the River Tyne within the limits of the Acts relating to the Commissioners. [670]

Finance.—In a county or borough area all payments are made out of the police fund, mainly financed from Government grant at the rate of 50 per cent. of net expenditure, and from the general or a special county rate in a county and the general rate in a borough. No pension fund is maintained by a police authority, an earlier statutory requirement to this effect having been repealed, except as regards a fund administered by a joint superannuation committee for the three divisions of Lincolnshire. A suggestion was, however, made in 1933 by the Association of Municipal Corporations that a fund, or local funds, might be established in respect of new entrants into police forces; this followed an investigation and report upon the cost of police pensions by the Government Actuary (e) as the outcome of a recommendation made in the Second Interim Report of a Committee on National Expenditure (f). In the Metropolitan Police area, payments are made from the Metropolitan Police Fund largely fed from Treasury grant and precepts on rating authorities, and in the City of London Police area from a fund largely fed from Treasury grant and the general rate. [671]

Retirement.—Apart from retirement on pension when qualified or otherwise, retirement of a member of a police force is compulsory under an age-limit according to rank. A sergeant or constable must retire at age fifty-five, a superintendent or inspector at age sixty, and a chief constable or assistant chief constable at age sixty-five, subject to extension, in the interests of efficiency, for a period not exceeding five years at the discretion of the chief officer or the police authority as the case may require and, in a borough with a separate police force, with the approval of the watch committee (g). [672]

Members' Pensions. *Ordinary Pension.*—A member of a police force is entitled to an ordinary pension (i.) upon retirement after completion of twenty-five years' (h) approved service (see *post*, pp. 259 *et seq.*) after due notice of intention to retire has been given to the police authority; (ii.) upon retirement due to infirmity of mind or body (i.) after ten years' approved service. [673]

Assured Pension.—The amount of a pension may be, and in practice usually is, settled at the time of entitlement in a case where a member of a force continues in service after date of entitlement to retire on pension without a medical certificate (j). This settlement, however,

(e) Report dated December 31, 1980.

(f) Cmnd. 1582, 1922.

(g) Police Pensions Act, 1921, s. 1 (1).

(h) *Ibid.*, s. 2 (3). A chief constable or assistant chief constable appointed after August 27, 1921, cannot normally retire until the age of sixty. The May Committee on National Expenditure (Cmnd. 3920) recommended (para. 168 of Report) that voluntary retirement of a member of a police force should not be permitted until the age of fifty is reached, and the Ray Committee on Local Expenditure (Cmnd. 4200) suggested (para. 261 of Report) that police in country districts might serve until the age of sixty and the age of fifty-five in the more populous areas; no legislative action has been taken, but H.O. Circular, October 26, 1931, urged police authorities to utilise s. 6 (1) of Police Pensions Act, 1921 ("assured pensions"; see *supra*),

(i) As to medical examination, attendance, treatment, cancellation of pension, see *post*, p. 261.

(j) Police Pensions Act, 1921, s. 6.

does not prevent the payment of a larger pension due to the further service when the officer ultimately retires. A preliminary and annual medical examination must be made with a view to ensuring physical fitness for further service. No additional allowance may now be granted, and an additional allowance in force on October 26, 1931, must not subsequently bear a higher proportion to pay (*k*) for the time being than was the case on the date just mentioned (*l*). [674.]

Special Pension.—A member of a police force (*m*) is entitled to a special pension if incapacitated through injury (*n*) received in the execution of duty without the member's own default. [675.]

Double Pension.—Express provision (*o*), overriding normal prohibition (*p*), is made for a special pension in addition, in certain circumstances, to an ordinary pension (if any) of a member of the first class of the police reserve called up for services with a police force, or of a pensioner who joins for service in an emergency. [676.]

Scales of Pensions.—There are six scales of pensions (*q*), each being applicable to different circumstances. No. 1 provides for a normal ordinary pension (*r*) of thirty-sixtieths of annual pay (*s*) after completion

(*k*) H.O. state that this is "gross pensionable pay" (I.M.T.A. Financial Circular, 1932, p. 51).

(*l*) National Economy (Police) Order, 1931 (S.R. & O., 1931, No. 913).

(*m*) Police Pensions Act, 1921, s. 27, including a member of the first class of the police reserve called up for active service, or a pensioned or other ex-member serving in an emergency.

(*n*) As to medical examination, attendance, treatment, cancellation of pension, see *post*, p. 261.

(*o*) Police Pensions Act, 1921, s. 27 (2).

(*p*) *Ibid.*, Sched. I., Part III., r. 13.

(*q*) *Ibid.*, Sched. I., Part I.

(*r*) *Ibid.*, s. 29 (1). A member of a police force serving on July 1, 1919, who did not give notice in writing within three months after the passing of the Act (July 28, 1921) of his desire that the scale of ordinary pensions laid down in the Act of 1921 should apply to him, remains subject to the scale of ordinary pensions applicable immediately before the commencement of the Act (August 28, 1921). The fixed scale adopted by police authorities under s. 3 and First Schedule of the Police Act, 1890, usually permitted retirement at the option of a member of the force after twenty-six completed years of approved service on a pension equal to two-thirds of annual pay, compared with the necessity of completing thirty years under the Act of 1921, and few members elected to become subject to the new scale. In many cases, a member retiring before July 1, 1949, will be entitled to a pension according to scale fixed by a police authority under the Act of 1890.

(*s*) *Ibid.*, Sched. I., Part III., para. 20, provided that in the case of recognised ranks of chief constable, assistant chief constable, superintendent, inspector, sergeant and constable "annual pay" is that at the date of death or retirement, and directs multiplication of weekly pay by fifty-two. In the case of a member of a police force remaining subject to the Police Act, 1890, for pension purposes, annual pay has been held to mean 365 times the amount of the daily pay (*Upperton v. Ridley*, [1900] 1 Q. B. 680; affirmed, [1903] A. C. 281; 37 Digest 193, 133), but practice varies with regard to the conversion of weekly pay to an annual figure in the case of a member subject to Police Act, 1890. The preference of the majority of authorities appears to be for multiplication of weekly pay by 365½ and division by 7, while some multiply weekly pay by 52½ and a few by 52. There has been division of opinion between District Auditors of the M. of H., and one authority altered their practice to multiplication of weekly pay by 52 instead of 52½, following counsel's opinion (I.M.T.A., Local Government Finance, 1936, p. 222). *Ibid.*, provision is made for a three-years' average where recent promotion has occurred; in case of reduction in rank, three years' average not allowed and pay is that at date of retirement (*Ruff v. Secretary of State for Home Department* (1896), 60 J. P. 343; 37 Digest 193, 130). *Ibid.*, s. 27 (1), a special pension payable to a police reservist, and others who have served in an emergency, is based upon current rate of pay. Police Regulations (Consolidated S.R. & O., 1933), Regulation 64, all allowances in respect of rent, uniform, boot and others, are declared non-pensionable. *Ibid.*, regulations 58, 59, provisos, increments for long service and efficiency of constable

of a minimum of twenty-five years of approved service, thereafter increasing by two-sixtieths for each year until a maximum of forty-sixtieths is reached in respect of thirty or more completed years of approved service. No. 2 provides for an ordinary pension following retirement on account of ill-health, commencing with ten-sixtieths of annual pay after completion of a minimum of ten years' approved service, one-sixtieth being added for each further year of approved service up to twenty, and proceeding thereafter by two-sixtieths for each additional year until the usual maximum of forty-sixtieths is reached in respect of thirty or more completed years of approved service. Special pensions, following an injury received in the execution of duty (*t*), consist of fractions of annual pay which vary according to approved service as follows :

Scale No. 3.—Total disablement (*u*) from non-accidental (*a*) injury (*b*).

Scale No. 4.—Total disablement (*u*) from accidental (*c*) injury (*b*).

Scale No. 5.—Partial disablement from non-accidental (*a*) injury.

Scale No. 6.—Partial disablement from accidental (*c*) injury.

Forty-five-sixtieths during the first ten years of approved service, progressing by three-sixtieths in quinquennial periods to a maximum, after thirty or more years of approved service, of sixty-sixtieths.

Thirty-sixtieths during the first ten years of approved service, progressing by two-sixtieths in quinquennial periods to a maximum, after thirty or more years of approved service, of forty-sixtieths.

A proportion of Scale No. 3 commensurate with degree of disablement, but not less than twenty-sixtieths during the first ten years of approved service, progressing by one-sixtieth for each of years eleven to twenty, and two-sixtieths for each of years twenty-one to twenty-five, thus reaching forty-sixtieths after twenty-five or more years of approved service.

A proportion of Scale No. 4 commensurate with degree of disablement, but not less than ten-sixtieths during the first ten years, progressing by one-sixtieth for each of years eleven to twenty, and two-sixtieths for each year twenty-one to thirty, thus reaching forty-sixtieths after thirty or more years of approved service. [677]

In receipt of pay under Scale B not to be pensionable pay; Police Pay (New Entrants) Committee (Cmnd. 4274, 1938) recommended this modification. Police (Women) Regulations (S.R. & O., 1933, No. 722), regulations 49 and 50, additional increments for long service and efficiency not to be reckoned.

(*t*) Police Pensions Act, 1921, s. 33 (2), sets out circumstances in which an injury is deemed to have been suffered in the execution of duty.

(*u*) *Ibid.*, s. 33 (1), means total loss of earning capacity in any employment.

(*a*) *Ibid.*, s. 33, an injury intentionally inflicted or incurred in the performance of a duty involving special risks; the Home Secretary has ruled (reversing earlier rulings) that motor-cycle patrols are engaged in duty involving special risks.

(*b*) *Ibid.*, Sched. I., Part I., if it is not possible to determine definitely whether the injury is accidental or non-accidental, a rate intermediate between these scales as determined by the police authority.

(*c*) Not defined, apparently determinable on facts and by elimination of non-accidental circumstances.

Widows' Pensions. *Ordinary Pensions.*—The widow of a member of a police force who was serving on September 1, 1918 (*d*), or who joined the force since September 1, 1918, and, in the latter case, has completed five years' approved service, is entitled to a widow's ordinary pension if her husband dies (*i*) whilst serving in the force; or (*ii*) whilst in receipt of pension from a police authority; or (*iii*) in consequence of any disease or injury on account of which he retired from a police force; or (*iv*) in any case where a member of a police force dies whilst serving, or after retirement on pension, following an accidental (*e*) injury received in the execution of his duty without his own default. The amount of an ordinary annual pension is normally based upon Scale (*i*), being £80 in respect of a husband who was a constable, sergeant or sub-inspector; £40 if an inspector (including sub-divisional or chief inspector); or £50 if of a higher rank. Scale (*i*) is inapplicable if smaller than Scale (*ii*), which provides for a widow's pension of 4 per cent. of her husband's annual pay if he had completed ten but less than fifteen completed years of approved service, and an addition of 2 per cent. in respect of whole or part of each succeeding service quinquennium until the maximum of 12½ per cent. of annual pay is reached in respect of thirty or more completed years of approved service; an amount ascertained under Scale (*ii*) is, however, subject to a deduction of 25 per cent. in respect of each year for which a husband's pension has been drawn. [678]

Widow's Special Pension.—A widow's special pension, amounting to one-third of her husband's annual pay at the time of his death or retirement, is payable in any case where a serving or pensioned member of a police force dies following a non-accidental (*f*) injury received in the execution of his duty without his own default. [679]

Widow's Pension General Rules.—These rules (*g*) make provision with regard to (*i*) a widow who has been living apart from her husband, and the maximum amount payable in that case; (*ii*) ineligibility unless marriage occurred before retirement of a pensioner, subject to exceptions; (*iii*) payment as from date of death or from the end of the last period in respect of which a pension was paid to the husband; (*iv*) re-marriage; and (*v*) good character. [680]

Children's Allowances.—Children under sixteen years of age are entitled, until they reach that age, to an allowance where the father dies (*i*) whilst serving as a member of a police force, or (*ii*) within twelve months after having been granted a pension, or (*iii*) at any time from the effects of an injury received in the execution of his duty without his own default. Where the father dies as the result of a non-accidental (*h*) injury received in the execution of duty, the amount of annual allowance is one-fifteenth of annual pay in respect of each child, and may be increased to two-fifteenths in respect of each child if there is no widow or the widow dies before all the children attain the age of sixteen. The aggregate amount paid in any year by way of allowances and the widow's pension, if any, must not, however, exceed two-thirds of annual pay. Where the father dies from any cause other than

(*d*) Police Pensions Act, 1921, s. 29 (2), including service with H.M. Forces on that date.

(*e*) See note (*c*), *ante*, p. 256.

(*f*) See note (*a*), *ante*, p. 256.

(*g*) Police Pensions Act, 1921, Sched. I., Part III.

(*h*) See note (*a*), *ante*, p. 256.

non-accidental injury the amount of annual allowance in respect of each child is £10 if he was a constable, sergeant or sub-inspector; £12 if an inspector (including sub-divisional or chief inspector); or £15 if of higher rank, subject to maxima of £30, £40 and £50 in the three cases respectively. An increase of 50 per cent. may be made in any of these amounts if there is no widow, or if she dies before all the children attain the age of sixteen. An allowance cannot be granted to a child of a pensioner unless the marriage took place before he retired on pension, except in the case of a police reservist (i). [681]

Gratuities. *To a Member.*—A member of a police force is entitled to a gratuity where he is ineligible for a pension owing to compulsory retirement on account of age before completing requisite years approved service, or owing to retirement with medical certificate, otherwise than on the ground of disablement through injury received in the execution of duty, with less than ten years' approved service. The amount of a gratuity is equal to one-twelfth of annual pay for each completed year of approved service or, if one year of approved service has not been completed, the amount is equal to rateable deductions made from pay. No gratuity is payable in the event of retirement before expiry of a period of service declared by regulations to be a period of probationary service. [682]

To a Widow.—A widow of a serving member of a police force who is not entitled to a widow's pension, is entitled to a gratuity not exceeding an amount equal to one-twelfth of her husband's annual pay for each completed year of approved service, or to the amount of rateable deductions from pay where he had completed less than one year of approved service. A gratuity, not exceeding the amount just mentioned, may be granted to a widow in lieu of a widow's pension to which she may be entitled, at the discretion of the police authority if they are satisfied that there are special reasons for that course and the widow gives her consent (k). [683]

To a Child.—A child under sixteen years of age who is entitled to an allowance as a child of a member of a police force may be granted a gratuity in lieu of such allowance, at the discretion of the police authority and with the consent of the man's widow, or, if he leaves no widow, the guardian of the child. The amount of the gratuity is within the discretion of the police authority up to an amount not exceeding one-sixtieth of the annual pay for each completed year of approved service of the member of the force or pensioner, or, if approved service is less than a complete year, not exceeding one-sixtieth of annual pay. Total gratuities granted to the children are not to exceed annual pay (see also note (k), *infra*). [684]

To a Relative.—A relative who has been wholly or mainly dependent upon a member of a police force may be granted a gratuity at the discretion of a police authority where the member of the force dies whilst in the force, or within twelve months after the grant of a pension, or at any time from the effects of an injury received in the execution

(i) Police Pensions Act, 1921, Sched. I., Part III., r. 16; and s. 27.

(k) Five alternative methods of paying a pension to a widow and allowances in respect of her two children, or of combining a pension to a widow with a gratuity in respect of one or both of her children and vice versa, as proposed by a City Treasurer, have been agreed by the H.O. as legally permissible (correspondence reproduced in I.M.T.A. Financial Circular, 1933, p. 222).

of his duty without his own default. Total amount of the gratuity or gratuities must not exceed rateable deductions from pay. [685]

Gratuity General Rules.—These rules (*l*) provide that payment shall be made in one sum, except that in special cases it may be paid by instalments, or applied on behalf of the grantee, if the police authority considers that it would be to the advantage of a widow, child or dependant to do so. A gratuity to a child or dependant may be paid to a guardian or trustee. Provision is also made with regard to (i.) a widow who has been living apart from her husband; (ii.) ineligibility unless marriage occurred before retirement of pensioner, subject to exceptions; (iii.) payment of balance of a widow's gratuity in the event of re-marriage; (iv.) widow's good character. [686]

Approved Service. Definition.—The statutory definition is such service as may, after certain deductions, be certified by the chief officer of police to have been diligent and faithful service (*m*), and the length of service so certified often substantially governs eligibility for and amount of pension of a member of a police force, or the amount of a gratuity to a member, his widow or child. Service of a member before attaining the age of twenty years cannot be included, except where incapacity for duty before that age by reason of infirmity of mind or body is occasioned by an injury received in the execution of duty without his own default. Deductions may be made pursuant to regulations in respect of absence from duty on account of sickness (*n*), misconduct or neglect of duty. Notice of a deduction must be given to the member, who may appeal to the chief officer of his police force against any act of any superior officer which prevents him from reckoning any actual period of service as approved service; in a borough the decision of the chief officer is subject to the approval of the watch committee (*o*). [687]

Service in another Force.—Service of one year or more is aggregated (*p*) with that in the force from which a member retires or in which he is serving at the time of death, and the amount of any pension, gratuity or allowance appropriate to earlier service is usually (*q*) the subject of a proportionate contribution (*r*) agreed between the police

(*l*) Police Pensions Act, 1921, Sched. I., Part III.

(*m*) *Ibid.*, s. 7 (1).

(*n*) Police Regulations (Consolidated S.R. & O., 1933), regulation 89A, and Police (Women) Regulations (S.R. & O., 1933, No. 722), regulation 81, no deduction in respect of duty authorised absence due to sickness, unless certified by a medical practitioner as due to member's own default or vicious habits.

(*o*) Police Pensions Act, 1921, s. 7 (2).

(*p*) *Ibid.*, s. 8 (1), after August 27, 1921, subject to removal from one force to another having been made with the written sanction of the chief officer of the former.

(*q*) *Ibid.*, s. 27 (3), makes special provision with regard to payments to or in respect of a police reservist called up for service, or others serving in an emergency.

(*r*) Full pension is paid by the police authority with whom the member is serving at date of retirement and a contribution is receivable from each preceding authority. In the case of three police authorities calculations are made as follows:

Authority No. 3 from whose service retirement occurs:

Pays to the member a full pension based on annual pay at date of retirement and aggregate of approved service.

Authority No. 2 (an intermediate authority):

Pays to No. 3 an amount equivalent to a hypothetical pension based on aggregate actual service and annual pay at date of transfer, less contribution payable by Authority No. 1.

authorities, or in default of agreement settled by an arbitrator appointed by the Secretary of State. [688]

Rejoining Member.—A member of a police force who retired previously from the same force without a pension can count earlier approved service subject to his repayment (*s*) of the amount of any gratuity granted to him, or of refunded rateable deductions; the same principle is applicable if he joins another force (*t*). [689]

Interchange.—Provision is made for interchange between a police force, the civil service, and the staff of the metropolitan police, special features being (i.) the reckoning of three years of police service as four years of service in the other capacities just mentioned and vice versa; (ii.) the apportionment of any sum payable between money provided by Parliament and a police fund in such proportions as may be determined by the Treasury; and (iii.) power for an amount payable to or in respect of one of His Majesty's inspectors of constabulary who has previously served in a police force to be equitably increased by the Treasury having regard to the amount which would have been payable had he continued in the police force (*u*). [690]

Reserve Forces.—A member of the reserve forces of the navy, army or air force who is a member of a police force is entitled to count as approved service a period of training or service for which he is called out, and any period during which he was incapacitated for police duty owing to an injury received during his period of training or service without his own default. [691]

Service in Respect of Pension Period.—A period during which a pension is drawn is reckoned as approved service in the event of a member being required to serve again following cancellation of a pension granted in respect of a non-accidental injury received in the execution of duty. [692]

Deductions from Pay.—Rateable deductions at the rate of 5 per cent. per annum are made from the pay (*a*) of a member of a police force (*b*), and are normally returnable to him upon his leaving the force without a pension or gratuity (*c*). If, however, a member of a police force

Authority No. 1 (the first authority served):

Pays to No. 3 an amount equivalent to a hypothetical pension based on actual service and annual pay as at date of transfer to No. 2.

H.O. letters containing full information and setting out the basis of apportionment of a pension between successive police authorities were reproduced in I.M.T.A. Financial Circular, 1924, pp. 75 and 272. In the case of a member of a Scottish police force who transferred to a force in England or Wales, and vice versa, before August 28, 1921, he carried his pensionable service with him, but the transferor authority is under no liability to the transferee authority in respect of either the member's rateable deductions or of any contribution towards his pension (opinion of Secretary of State for Scotland, I.M.T.A. Financial Circular, 1926, p. 178). As regards proportionate contributions towards a widow's pension, the Council of the Institute of Municipal Treasurers and Accountants have expressed the view that the proportion of the widow's pension to be paid by the contributing authority should be the same as the proportion of the pension which that authority would have contributed had the police officer retired at the date of his death (I.M.T.A. Financial Circular, 1931, p. 70).

(*s*) Police Pensions Act, 1921, s. 9 (8), by means of deductions from pay, or otherwise at the police authority may determine.

(*t*) *Ibid.*, s. 9 (1), (2).

(*u*) *Ibid.*, s. 10.

(*a*) All rent, boot, uniform and other allowances are expressly non-pensionable (Police Regulations (Consolidated S.R. & O., 1933), regulation 64).

(*b*) Police Pensions Act, 1921, s. 19, as amended by Police Pensions Act, 1926, s. 1.

(*c*) *Ibid.*, s. 20 (1), states that the police authority . . . "shall pay him the

is required to retire as an alternative to dismissal, the whole or part of his rateable deductions may be paid to him or for the benefit of his wife or children; in the event of dismissal a payment may be made only for the benefit of wife or children. Special provisions (d), similar in many respects to those just mentioned, empower the return of rateable deductions of a member of a police force who left the force on or between July 1, 1919 (the date of the police strike) and August 27, 1921. [698]

Medical Examination and Attendance.—A medical certificate with regard to incapacity is requisite before a member of a police force is granted a pension or gratuity on the ground of infirmity of mind or body (e), and, unless the authority otherwise resolve, a certificate at yearly intervals, or otherwise, is required until expiry of power to call upon the pensioner to serve again (f). Questions whether infirmity is attributable to injury or as to degree of disablement are also determinable on this evidence (g); also, in connection with reassessment of a special pension following substantial alteration in the degree of disablement (h). In the event of refusal or failure of a member or pensioner to be examined by a medical practitioner selected by the authority, the authority may proceed without an examination (i). An appeal to an independent nominee of the Home Secretary, in accordance with rules made by the latter, may be made by a person dissatisfied with an examination by a medical practitioner selected by the police authority (k). A police authority may not require a pensioner to be re-examined for any purpose other than information as to his capacity (l). Medical attendance or special treatment may be provided by the police authority during the period within which, if incapacity should cease, a pensioner might be required to serve again (m). In the event of discontinuance of incapacity, a pension may be cancelled and re-entry into service required (n). [694]

Special Constables.—Broadly similar provisions are applicable as a result of the exercise (o) of power conferred (p) upon the Home Secretary of applying enactments in force in relation to police forces generally. A pension is payable to a special constable permanently unable to follow his ordinary employment owing to injury or illness arising in the execution of duty without his own default. A pension, gratuity, or allowance, as the case may be, is payable to a widow or child where a special constable dies from the effect of such injury or illness. An order (o) provides, *inter alia*, for reckoning of service and pay. [695]

whole of the rateable deductions which have been made from his pay"; in practice, the authority whose service the member leaves pays the amount of deductions made by that authority, and the contributor has to make separate application to preceding authorities.

(d) Police Pensions Act, 1926, s. 2.

(e) Police Pensions Act, 1921, ss. 2 (1) and 12 (1).

(f) *Ibid.*, s. 12 (3).

(g) *Ibid.*, s. 12 (2).

(h) *Ibid.*, s. 12 (6).

(i) *Ibid.*, s. 12 (7).

(k) *Ibid.*, s. 12 (8), and Rules (S.R. & O., 1921, No. 1450).

(l) *R. v. Leigh (Lord), Re Kincham*, [1897] 1 Q. B. 132, C. A.; 37 Digest 192, 129.

(m) Police Regulations (Consolidated S.R. & O., 1938), regulation 88 (2), and Police (Women) Regulations (S.R. & O., 1938, No. 722), regulation 79 (2).

(n) Police Pensions Act, 1921, s. 12 (4).

(o) Special Constables Order, 1923 (S.R. & O., 1923, No. 905).

(p) Special Constables Act, 1923, s. 1 (1); 12 Halsbury's Statutes 895.

Incidents of Payments.—A pension, allowance or gratuity (i.) may not usually be assigned ; (ii.) may be paid by a police authority to a poor law authority in repayment of expenditure on poor relief ; (iii.) may be paid direct to a third person legally liable to be maintained ; (iv.) may be offset against sums receivable by a police authority ; (v.) may be paid to an institution or person having the care of a payee incapacitated to act ; (vi.) if an amount due does not exceed £100, may be paid or distributed without production of probate or other proof of title ; (vii.) may be paid to or on behalf of a minor ; (viii.) a pension or allowance (a) must be paid in advance, and no repayment required in respect of a period after death (q) ; (b) may be withdrawn in the event of specified improprieties in the behaviour of a grantee (r). A pension may be wholly or partly suspended while a person is in the service of another police force, except in the case of a police reservist called up for active service, or of an ex-member of a police force rejoining for an emergency (s). [696]

Regulations of Police Authority.—Every authority is empowered to make regulations, subject to any which may be, and in some respects have been (noticed elsewhere as appropriate), made by the Home Secretary, with respect to (i.) deductions from service for sickness, misconduct or neglect of duty ; (ii.) the mode in which pensions are to be paid ; and (iii.) the declarations to be made as a condition of the payment of pensions (t), gratuities, or allowances payable by the authority (u). [697]

Appeals.—An appeal may be made to the appropriate court of quarter sessions, after reconsideration by a police authority, with regard to a pension or allowance declared to have been forfeited, or a claim as of right to a pension, allowance or gratuity, or to a larger amount. The decision of quarter sessions is final, except that an appeal lies to the High Court on a point of law (a). [698]

Fire Police.—The fire brigade service is carried out by the borough police in a number of county boroughs and non-county boroughs (b).

(g) Where an amount due in advance in respect of a period is not actually paid before death during the period (e.g. owing to illness of a pensioner), it would seem that payment need be made only up to date of death, but, in practice, the full amount due in advance is sometimes paid. H.O. replies to inquiries by police authorities (H.O. letters dated December 30, 1925, and May 9, 1932) confirm the foregoing interpretation but, in effect, suggest payment of full amount as an act of grace.

(r) Police Pensions Act, 1921, ss. 14, 15.

(s) Police Pensions Act, 1926, s. 18.

(t) Practice varies with regard to a form of life certificate, or a certificate of identity, and the intervals at which these are obtained from pensioners. In some cases completion of a form of declaration, requiring attestation by specified persons, is required by police authorities prior to dispatch of monthly pension cheques ; in other cases pensions are paid fortnightly and pensioners living outside the area are required to furnish a life certificate or other evidence at quarterly intervals. In isolated cases, a form of life certificate is endorsed on the back of cheques, but it seems that consequent alteration of legal status of cheques tends to raise difficulties with banks, who sometimes require indemnities.

(u) Police Pensions Act, 1921, s. 23.

(a) *Ibid.*, 1921, s. 17. As to appeal with regard to medical examination, see *ante*, p. 261.

(b) Report of Select Committee on Police Forces (Amalgamation), year 1932, stated in para. 32 that in twelve county boroughs and nineteen non-county boroughs with a population of less than 75,000, the fire brigade service was carried out by the borough police.

and there are nearly 1,000 members (*c*) of police forces in England and Wales employed whole-time as firemen (*d*). Application may be made by a local authority to the Home Secretary for a provisional order repealing or modifying a local Act or order containing provisions relating to a fire brigade or fire police with a view to bringing such provisions into harmony with legislation governing police pensions. A pension, allowance or gratuity to or in respect of a member of a police force employed under the direction of a police authority wholly or partly as a fireman is payable out of the police fund, subject to a contribution from the fund or rate chargeable with the cost of fire brigade or fire police (*e*). Whole-time approved service as a fireman whilst a member of a police force is reckoned as "past pensionable service" by a professional fireman (*f*). [699]

Pensions (Increase) Acts.—These Acts (*g*) apply by virtue of Treasury Regulations (*h*) to police pensions granted under a number of pre-war enactments as specified. Pensions subject to these Acts may be increased (i.) not exceeding £25 a year, by 70 per cent.; (ii.) exceeding £25 but not £50 a year, 65 per cent.; and (iii.) exceeding £50 but not £100 a year, 50 per cent., but where a pension so increased is less than the amount to which a smaller pension might be increased, it may be increased to *that* amount. Statutory conditions which must be fulfilled are (i.) a pensioner must have attained the age of sixty years or have retired on account of physical or mental infirmity, or a widow in receipt of a pension arising from the services of her late husband must have attained the age of forty years; and (ii.) a pensioner must satisfy the pension authority that his means, including pension, are less than £150 a year if unmarried, or £200 a year, including means of wife, if married. Further provisions in the regulations (*supra*) relate to matters such as assessment of means, attestation of a Declaration of Means, and the inclusion of an adopted child within the definition of "child." [700]

Income Tax.—Rateable deductions from pay are allowable in arriving at the amount of income of a member of a police force assessable to tax under Schedule E, and in the event of repayment of rateable deductions by a police authority it is laid down that an amount equal to the total tax which would have been paid by the member from year to year shall be deducted from the repayment (*i*). The amount in respect of income tax to be deducted from such repayment is ascertained by the entry of particulars as to, *inter alia*, annual pay (commencing with the fiscal year 1922-3 in which the relevant statutory provisions (*i*) became applicable) on a form sent to the local Inspector of Taxes, who arranges for the entry on that form of the total amount of income tax to be deducted, and returns the form to the authority. An amount thus ascertained and deducted from a repayment by the authority is accounted for to the Inland Revenue Commissioners after the close of the financial year. Pensions payable during retirement are assessable in accordance with statutory provisions applicable under Schedule E, including the special provisions relating to the first fiscal year

(c) Annual Report of H.M. Inspector of Constabulary for 1935-6.

(d) Police Regulations (Consolidated S.R. & O., 1933), are not applicable, regulation 94.

(e) Police Pensions Act, 1921, s. 32.

(f) Fire Brigade Pensions Act, 1925, s. 22 (1) (b) (ii.).

(g) Pensions (Increase) Acts, 1920 and 1924.

(h) S.R. & O., 1924, No. 1156, and S.R. & O., 1931, No. 980.

(i) Finance Act, 1922, s. 31 (1).

in which pay ceases and a pension commences. Relief from tax on investment income from securities previously held by a pensions fund abolished by the Police Pensions Act, 1921, is obtainable by the process of set-off against accountability for tax deducted from loan interest paid, or, as a concession (*k*), the usual Treasury grant of 50 per cent. is paid to a police authority in respect of income tax certified by the local inspector of taxes as falling to be borne as a result of abolition of a former pensions fund, thus in any case preserving the *status quo ante*. Naturally, no question of this nature arises where a police authority has disposed of former pensions fund investments and, with the consent of the H.O., utilised the proceeds for financing the erection of police buildings or other purposes. [701]

London.—Apart from modifications mainly in the nature of adaptations to particular circumstances (*l*), the same statutory provisions are applicable to the City of London Police and Metropolitan Police, but staffs of the Metropolitan Police offices are pensioned on civil service terms under separate legislation (*m*). [702]

(*k*) H.O. letter 24th November, 1934, reproduced in I.M.T.A. Financial Circular, 1925, p. 4.

(*l*) Police Pensions Act, 1921, ss. 25 and 26.

(*m*) Metropolitan Police Staff (Superannuation) Acts, 1875 to 1931; 25 Halsbury (2nd ed.) 344; the Superannuation (Various Services) Bill, 1937 (probably Act of 1938), would remedy the defective omission of the Police Act, 1909, to authorise the grant of death gratuities, which have in fact been paid, and, *inter alia*, authorise allocation of superannuation benefits to spouses and dependants.

POLICE STATIONS

See STANDING JOINT COMMITTEE; WATCH COMMITTEE.

POLIOMYELITIS

See INFECTIOUS DISEASES.

POLL

See ELECTIONS.

POLLING DISTRICTS

See ELECTIONS.

POLLING STATION

See ELECTIONS.

POLLUTION OF RIVERS

	PAGE		PAGE
THE PROBLEM OF POLLUTION	265	Land Drainage Act, 1930	270
COMMON LAW POSITION	266	Salmon and Freshwater Fisheries	
General	266	Act, 1928	270
Definition of Pollution	266	P.I.L.A., 1936	271
Acquisition of Right to Pollute	267	Rivers Pollution Prevention	
Extent of Right to Pollute	267	Acts, 1876 and 1893	272
Remedies for Pollution	267	Definition of Terms	273
Abatement	267	Pollution by Solid Refuse	273
Action for Injunction and Damages	268	Pollution by Sewage	274
STATUTORY PROHIBITION OF POLLUTION	268	Pollution by Trade Effluents	274
Waterworks Clauses Act, 1847	268	Pollution from Mining	274
Gasworks Clauses Act, 1847	269	ENFORCEMENT OF STATUTORY PROVISIONS	274
Lighting and Watching Act, 1832	269	Authorities to Institute Proceedings	274
Cemeteries Clauses Act, 1847	269	Constitution of Joint Committees	275
Diseases of Animals Act, 1894	269	Tribunal and Proceedings Available	277
Alkali, etc., Works Regulation Act, 1906	269	Restriction on Proceedings	277
Oil in Navigable Waters Act, 1922	270	LONDON	277

See also titles :

FRESHWATER FISHERIES ;
LAND DRAINAGE ;
JOINT BOARDS AND COMMITTEES ;
MINES AND MINERALS ;

SALMON AND TROUT FISHERIES ;
SEWAGE DISPOSAL ;
TRADE EFFLUENTS.

THE PROBLEM OF POLLUTION

River pollution has been a vexed question for many years. Unfortunately, there are important river users with conflicting interests, as, for example, sanitary authorities in regard to sewage disposal, manufacturers in regard to trade effluents, and fishing interests. The first two are under the jurisdiction of the M. of H. while the last are subject to the M. of A. & F. Again, local authorities, river boards, navigation boards and fishery boards have all some legal interest in the matter. Some work against their own interests. For instance, the M. of A. & F. while striving for pure rivers and streams in the interests of fish life have actively encouraged, on the agricultural side, the manufacture of beet sugar, and the effluent from beet sugar factories has caused serious pollution. The whole subject has, however, engaged the attention of these two Ministries for many years. In 1921 the M. of A. & F. set up a Standing Committee on River Pollution. Notwithstanding the amount of work done by that body they had to report in their third report, dated March 17, 1926, that "the further we delve into the problem of pollution, the more complex does that problem appear." [708]

In 1927 the M. of H. and the M. of A. & F. appointed a joint advisory committee "to consider and from time to time report on the

position with regard to the pollution of rivers and streams and on any legislative, administrative, or other measures which appear to them to be desirable for reducing such pollution." This committee have made three reports. In the first, published in August, 1928, they stated that there was no lack of administrative authority for enforcing the law. They emphasised the need for more effective administration of the existing law for preventing pollution and urged the establishment of joint river committees for the whole watershed of a river and its tributaries. Their second report, published June, 1930, dealt with the question of the admission of trade effluents into sewers and recommended that, subject to certain safeguards, traders should be given the right to require local authorities to receive trade effluents into their sewers. The third report, dated July, 1931, was not published owing to the national economy measures in force. In that report the joint committee took the view that, for the present, the most important measures for the improvement of rivers are (i.) the setting up of joint committees previously recommended, for which no amendment of the law is necessary, and (ii.) an amendment of the law placing an obligation on local authorities generally to take and deal with trade effluents at their sewage disposal works, which latter question has now been dealt with by the P.H. (Drainage of Trade Premises) Act, 1937; see title TRADE EFFLUENTS. The committee suggested a more thorough examination of the law at a later date when further joint river committees have been established and experience gained as to the working of the existing law.

A Water Pollution Research Board, an eminent scientific and technical body, was set up in 1927 for research work in connection with the treatment of water for public supply, the purification of sewage and the prevention of pollution by trade effluents. The publications and annual reports of this board are of the greatest value. [704]

COMMON LAW POSITION

General.—Every riparian owner is entitled, as a natural right, to have the water of his stream in its natural flow, without sensible diminution or increase and without sensible alteration in its character or quality (a). Pollution of the water is, therefore, in itself, an unlawful act and a nuisance. It is an infringement of the riparian owner's rights for which he can maintain an action even without proving actual damage (b).

It makes no difference in law whether the polluted water flows in a known or unknown channel, or trickles over the surface of the land, or percolates through the soil (c), or flows through a permanent artificial channel (d). [705]

Definition of Pollution.—Pollution may be defined as the addition of something which changes the natural qualities of the water, e.g. adding hard water to a soft-water stream (e); raising the temperature

(a) *Young (John) & Co. v. Bankside Distillery Co.*, [1893] A.C. 691; 44 Digest 18, 54. This also applies to a tidal river (*Lyon v. Fishmongers' Co.*, [1876] 1 App. Cas. 662; 44 Digest 107, 850).

(b) *Jones v. Llanwrst U.D.C.*, [1911] 1 Ch. 393; 44 Digest 38, 273.

(c) *Hodgkinson v. Ennor* (1863), 32 L.J. (Q.B.) 231; 44 Digest 38, 276; *Ballard v. Tomlinson* (1885), 29 Ch. D. 115; 44 Digest 5, 7.

(d) *Sutcliffe v. Booth* (1863), 32 L.J. (Q.B.) 136; 44 Digest 38, 275; *Baily & Co. v. Clark, Son and Morland*, [1902] 1 Ch. 649; 44 Digest 15, 71.

(e) *Young (John) & Co. v. Bankside Distillery Co.*, *supra*.

of the stream (*f*) ; discharging the refuse of a factory or sewage of a town into a stream (*g*). [706]

Acquisition of Right to Pollute.—A right to pollute may be gained by express grant, by implication of law (*h*) or under the doctrine of prescription (*i*). Such a right is an easement within the Prescription Act, 1832 (*k*). To acquire the right by user there must be a continuance of a perceptible amount of injury to the servient tenement for twenty years (*l*). But no person can acquire a prescriptive right to cause a public nuisance or injury to public health (*m*). [707]

Extent of Right to Pollute.—The user which originated the right must be its measure (*n*). A person who has acquired a right to pollute has no right to increase the pollution (*o*), or to substitute a totally different kind of pollution (*p*). [708]

Remedies for Pollution.—The remedies open to a person injured by pollution of water are (a) to abate the nuisance by his own act, or (b) an action for an injunction and damages. Where, however, the pollution amounts to a public nuisance the offender may be proceeded against by indictment or by information at the suit of the Attorney-General (*q*). In the case of a public nuisance a private person can only maintain an action where he proves that he has sustained some special damage over and above that inflicted upon the public at large (*r*). [709]

Abatement.—A person injured is entitled to remove the cause of the injury by his own act. But he must do so in a peaceable manner and take reasonable care that no more damage be done than is necessary for effecting his purpose (*s*). This, however, is a remedy which the law does not favour and it is not usually advisable (*t*). [710]

(*f*) *Tipping v. Eckersley* (1855), 2 K. & J. 264 ; 44 Digest 37, 269.

(*g*) *Crossley & Sons, Ltd. v. Lightowler* (1867), 2 Ch. App. 478 ; 44 Digest 56, 401 ; *A.-G. v. Cockermouth Local Board* (1874), L. R. 18 Eq. 172 ; 44 Digest 46, 323.

(*h*) *Hall v. Lund* (1868), 1 H. & C. 676 ; 44 Digest 39, 281.

(*i*) *Wood v. Waud* (1840), 3 Exch. 745 ; 19 Digest 153, 1054 ; *Crossley & Sons, Ltd. v. Lightowler, supra* ; *McIntyre Bros. v. McGavin*, [1893] A. C. 268 ; 19 Digest 158, 1099.

(*k*) 5 Halsbury's Statutes 523. For the law relating to Easements, see 11 Halsbury (2nd ed.), title "Easements and Profits à Prendre."

(*l*) *Murgatroyd v. Robinson* (1857), 7 E. & B. 391 ; 19 Digest 18, 51 ; *Goldsmid v. Tunbridge Wells Improvement Commissioners* (1866), 1 Ch. App. 340 ; 19 Digest 157, 1055.

(*m*) *R. v. Cross* (1812), 3 Camp. 224 ; 36 Digest 218, 602 ; *A.-G. v. Barnsley Corpn.*, [1874] W. N. 37 ; *Blackburne v. Somers* (1879), 5 L. R. Ir. 1 ; 44 Digest 40, 289*t* ; and see note (*l*), *post*, p. 271, and note (*i*), *post*, p. 278.

(*n*) *Crossley & Sons, Ltd. v. Lightowler, supra* ; *Blackburne v. Somers, supra*.

(*o*) *McIntyre Bros. v. McGavin, supra*. A progressive increase in pollution is destructive of the certainty and uniformity essential for the measurement of the user by which the extent of the prescriptive right to pollute is to be ascertained (*Hulley v. Silversprings Bleaching Co.*, [1922] 2 Ch. 268 ; 10 Digest 63, 361).

(*p*) *Clarke v. Somersetshire Drainage Commissioners* (1888), 57 L. J. (M. C.) 96 ; 10 Digest 89, 527.

(*q*) See 10 Halsbury (2nd ed.), title "Nuisance."

(*r*) *Winterbottom v. Lord Derby* (1867), L. R. 2 Exch. 316 ; 26 Digest 298, 251 ; *Benjamin v. Storrs* (1874), L. R. 9 C. P. 400 ; 36 Digest 212, 550.

(*s*) *Hill v. Cock* (1872), 36 J. P. 552 ; 44 Digest 33, 245 ; *Roberts v. Rose* (1865), L. R. 1 Exch. 82 ; 36 Digest 204, 465.

(*t*) *Lagan Navigation Co. v. Lambeg Bleaching, Dyeing and Finishing Co.*, [1927] A. C. 226 ; 36 Digest 219, 613.

Action for Injunction and Damages (u).—The court will grant an injunction to restrain pollution even where no actual damage is proved, to prevent the inconvenience of repeated actions for damages (a); also where the defendant claims the right to continue the conduct complained of, on the ground that the repetition of the act would at the end of twenty years establish a right in the claimant derogatory to the plaintiff's prior rights (b). If necessary the court will grant a mandatory injunction so as to compel the defendant to restore things to their former condition (c). Where there is imminent danger of substantial injury, or it appears that the apprehended danger, if it arises, will be irreparable, the court may grant an injunction *quia timet* (d).

It is no defence to an action to show that the stream is also fouled by others (e). Moreover, if the acts of several persons which independently would not cause pollution, result in producing pollution when combined, each may be restrained by injunction (f). [711]

STATUTORY PROHIBITION OF POLLUTION

Numerous statutes have been passed prohibiting or restricting the pollution of streams. The most important of these are the P.H.A., 1836 (g), and the Rivers Pollution Prevention Acts, 1876 and 1893 (h). There are, however, a number of Acts dealing with particular aspects, or with the pollution of water used for special purposes. [712]

Waterworks Clauses Act, 1847 (i).—This Act makes it an offence as regards any stream, etc., belonging to waterworks undertakers (i.) to bathe therein, wash, throw or cause to enter therein any dog or other animal; (ii.) to throw rubbish, dirt, filth, or other noisome thing therein, or wash or cleanse therein any cloth, wool, leather, or skin of any animal, or any clothes or other thing; (iii.) to cause the water of any sink, sewer, or drain, steam-engine, boiler or other filthy water to run or be brought therein, or to do any other act whereby the water is fouled (k). The penalty for every such offence is a sum not exceeding £5, and a daily penalty of 20s. for each subsequent day the offence continues, recoverable in a court of summary jurisdiction (l).

It is also an offence for any person (m) making or supplying gas (i)

(u) See, generally, 18 Halsbury (2nd ed.), title "Injunction."

(a) *Cleaves v. Staffordshire Potteries Waterworks Co.* (1872), 8 Ch. App. 125; 36 Digest 225, 661.

(b) *Swindon Waterworks Co. v. Wilts and Berks Canal Navigation Co.* (1875), L. R. 7 H. L. 697; 36 Digest 227, 637; *Harrop v. Hirst* (1868), L. R. 4 Exch. 43; 36 Digest 163, 56.

(c) *Spokes v. Banbury Board of Health* (1865), L. R. 1 Eq. 42; 44 Digest 53, 374; *Harrop v. Hirst*, *supra*; *Jackson v. Normanby Brick Co.*, [1899] 1 Ch. 468; 28 Digest 398, 282.

(d) *Fletcher v. Bealey* (1885), 28 Ch. D. 688; 28 Digest 407, 33d; *A.-G. v. Manchester Corpns.*, [1898] 2 Ch. 87; 28 Digest 407, 336.

(e) *Crosstey & Sons, Ltd. v. Lightowler* (1867), 2 Ch. App. 478; 44 Digest 56, 401; *A.-G. v. Leeds Corpns.* (1870), 5 Ch. App. 583; 44 Digest 48, 344.

(f) *Blair and Sumner v. Deakin* (1887), 52 J. P. 327; 44 Digest 88, 271.

(g) 29 Halsbury's Statutes 309—564. See also P.H. (Drainage of Trade Premises) Act, 1837, under title TRADE EFFLUENTS.

(h) 20 Halsbury's Statutes 316.

(i) *Ibid.*, 186. This Act applies to any waterworks authorised by an Act passed subsequent thereto and which declares it to be incorporated.

(k) S. 61; 29 Halsbury's Statutes 206.

(l) *Ibid.*, s. 85.

(m) This includes a corporation, whether aggregate or sole (*ibid.*, s. 3).

to cause or suffer to be brought or flow into any stream, etc., belonging to waterworks undertakers, or into any drain connecting therewith, any washing or other substance produced in making or supplying gas; or (ii.) wilfully to do any act connected with the making or supplying of gas whereby the water in any such stream is fouled (n). Offenders are liable to a penalty of £200 and a daily penalty of £20 recoverable in any of the superior courts during the continuance of the offence or within six months after it has ceased (n). [713]

Gasworks Clauses Act, 1847 (o).—This Act contains a similar prohibition of fouling *any* stream, etc., by gas washings and other acts (p). [714]

Lighting and Watching Act, 1833.—This Act prohibits the fouling of any river, brook or running stream by gas washings, etc. (q). It only applies, however, where gas is supplied to a parish adopting the provisions of the Act. [715]

Cemeteries Clauses Act, 1847 (r).—By this Act, a cemetery company is forbidden to cause or suffer to be brought or to flow into any stream, etc., any offensive matter from a cemetery whereby such water is fouled (s). The penalty is £50 for each offence and a daily penalty of £10 recoverable in any of the superior courts during the continuance of the offence or within six months after it has ceased. The person injured has, moreover, the right to sue for any special damage sustained by him (s). [716]

Diseases of Animals Act, 1894.—Under this Act it is an offence to throw, place, or cause or suffer to be thrown or placed, into or in any river, stream, etc., the carcase of an animal which has died of disease, or been slaughtered as diseased or suspected (t). An offender is liable on summary conviction to a fine of £50 and, on a further conviction within twelve months, may in the discretion of the court be sentenced to imprisonment for a term not exceeding one month with or without hard labour in lieu of a fine (u). [717]

Alkali, etc., Works Regulation Act, 1906.—By this Act every work in which acid is produced or used must be carried on in such a way that the acid does not come into contact with alkali waste or with drainage therefrom so as to cause a nuisance. A sanitary authority at the request and cost of the owner of such works may make a drain to carry off the acid to the sea or into any river or watercourse into which such acid may be carried without contravening the Rivers Pollution Prevention

(n) Ss. 62, 63. These sections are incorporated in the P.H.A., 1927; 29 Halsbury's Statutes 412, by virtue of s. 120 of the latter Act.

(o) 8 Halsbury's Statutes 1215. This Act applies to any gas works authorised by a subsequent Act that incorporates it.

(p) S. 21. The penalties are also the same. The P.H.A., 1875, s. 68 (which is unrepealed) also contains a prohibition against fouling any stream, etc., by gas washings and other acts in similar terms to the Waterworks Clauses Act and the Gasworks Clauses Act. Where the latter Act is incorporated by a local Act, or where a local Act containing similar provisions is in force, proceedings may be taken either under the P.H.A. or the local Act by virtue of s. 340 of the P.H.A., 1875.

(q) See s. 50; 8 Halsbury's Statutes 1203. The penalties are recoverable in any court (*ibid.*).

(r) 2 Halsbury's Statutes 255. This Act applies to any cemeteries authorised by subsequent Act declaring it to be incorporated therewith.

(s) Ss. 20—22; *ibid.*, 260.

(t) S. 52 (vii.); 1 Halsbury's Statutes 417.

(u) *Ibid.*; Diseases of Animals Act, 1927, s. 5; 1 Halsbury's Statutes 440.

Act, 1876 (a). The penalty for a first offence is a fine of £50 and for subsequent offences £100 and a daily penalty not exceeding £5 for every day such subsequent offence has continued (b). [718]

Oil in Navigable Waters Act, 1922.—It is an offence under this Act to discharge or allow the escape of oil into territorial waters or the water of harbours from a vessel or from any place on land or from any apparatus used for transferring oil to or from vessels or any other place (c). The expression "harbour" includes any port, dock, estuary or arm of the sea and any river or canal navigable by sea-going vessels (d).

The offence is punishable on summary conviction, by a fine not exceeding £100. It is, however, a good defence to prove in proceedings (i) against the owner or masters of a vessel, that the escape was due to, or that it was necessary to discharge the oil by reason of, collision, damage or accident to the vessel; and also, if the proceedings are for an escape of oil, that all reasonable measures were taken to prevent it; and (ii.) against any other person in respect of an escape of oil that he took all reasonable measures to prevent it (e). [719]

Land Drainage Act, 1930 (f).—Sect. 47 of this Act empowers a drainage board to make bye-laws for (*inter alia*) preventing the obstruction of any watercourse vested in or under the control of the board by the discharge thereinto of any liquid or solid matter or by reason of any such matter being suffered to flow or fall thereinto. See title DRAINAGE BOARDS, Vol. V., p. 76. [720]

Salmon and Freshwater Fisheries Act, 1923.—Fishery boards are empowered by this Act to make bye-laws (*inter alia*) to regulate the deposit or discharge in any waters containing fish of any liquid or solid matter, specified therein, detrimental to salmon, trout, or freshwater fish, or the spawn, or food of fish, but not so as to prejudice any powers of a sanitary or other local authority to discharge sewage in pursuance of a public general Act or local Act or of any provisional order confirmed by Parliament (g). The Act also provides that no person shall cause (h) or knowingly permit to flow or put, or knowingly permit to be put, into any waters containing fish, or into any tributaries (i) thereof, any liquid or solid matter to such an extent as to cause the waters to be poisonous or injurious to fish, or the spawning grounds, spawn, or food of fish, unless in the exercise of a lawful right (k)

(a) S. 3; 13 Halsbury's Statutes 805.

(b) *Ibid.*, sub-s. (2). The fine is recoverable by action in the county court and the sanction of the Minister of Health is required (s. 17).

(c) S. 1; 18 Halsbury's Statutes 804.

(d) *Ibid.*, s. 8.

(e) *Ibid.*, s. 1.

(f) 23 Halsbury's Statutes 520.

(g) S. 59 (p); 8 Halsbury's Statutes 815. Breach of a bye-law is an offence against the Act punishable on conviction in a court of summary jurisdiction by a fine not exceeding £50 and a further fine of not exceeding £5 for every day the offence continues after conviction. See *ibid.*, ss. 73, 74.

(h) If a person is not aware of the escape he is not guilty of causing to flow (*Moses v. Midland Rail. Co.* (1915), 84 L. J. (K. B.) 2181; 25 Digest 48, 37).

(i) This apparently means waterways which do not contain fish, spawn or fish food but contribute to waters which do contain fish. Reference may be made to the following cases: *Hall v. Reid* (1882), 10 Q. B. D. 184, n.; 25 Digest 41, 381; *Evans v. Owens*, [1895] 1 Q. B. 237; 25 Digest 41, 382; *Moses v. Igoe*, [1906] 1 K. B. 516; 25 Digest 42, 386.

(k) In water which is a stream as defined by s. 20 of the Rivers Pollution Pre-

or in continuation of a method in use before July 18, 1923 (*l*), and he proves that he has used the best practicable means within a reasonable cost to prevent such matter doing injury (*m*). Further, it is an offence in any fishery district for any one, other than a sanitary or other local authority acting under statutory powers, to discharge any trade effluent into any waters containing fish by means of any work constructed or altered after January 1, 1924, unless he gives three months' previous notice of the proposed new works to the fishery board or the Minister of Health (*n*). [721]

These offences are punishable in a court of summary jurisdiction by a fine of not exceeding £50 and a further fine of not exceeding £5 for every day the offence is continued after the conviction. For a third or subsequent conviction the offender is liable to imprisonment with or without hard labour for not exceeding three months (*o*). Proceedings can, however, only be instituted by the fishery board or a person who has first obtained a certificate from the Minister of Agriculture and Fisheries that he has a material interest in the waters alleged to be affected (*p*).

The use of dynamite and other explosive substances, and the putting of poison, lime and noxious material in any waters (including territorial waters adjoining the coast of England and Wales) with intent to take or destroy fish is prohibited. An offender is liable to a fine not exceeding £50 on summary conviction, or to imprisonment with or without hard labour for not exceeding three months (*q*). [722]

P.H.A., 1936.—A local authority may not construct, or use any public or other sewer, or drain, or outfall, for the purpose of conveying foul water into any natural or artificial stream, watercourse, canal, pond or lake, until such water has been so treated as not to affect prejudicially the purity and quality of the water in the stream, watercourse, canal, pond or lake (*r*). The remedy for a contravention of the section is an action for damages and injunction (*s*).

vention Act, 1876, it will be necessary to prove that the right is one permitted by that Act.

(*l*) This phrase was inserted in consequence of the decision of *Eve, J., in Hulley v. Silversprings Bleaching Co.*, [1922] 2 Ch. 268; 44 Digest 42, 302, where he held that since the passing of the Rivers Pollution Prevention Act, 1876, no prescriptive right can be acquired to create a pollution made illegal by that Act. See also *George Legge and Son, Ltd. v. Wentlock Corpns.*, referred to in note (*t*), p. 273, *post*.

(*m*) S. 8; 8 Halsbury's Statutes 788.

(*n*) *Ibid.*, s. 8 (2). The fishery board or the Minister may approve the use of the works (*ibid.*).

(*o*) *Ibid.*, s. 74.

(*p*) *Ibid.*, s. 8 (3).

(*q*) *Ibid.*, s. 9.

(*r*) P.H.A., 1936, s. 30; 29 Halsbury's Statutes 348. This restriction does not prevent street surface water containing sand and silt being sent down the river (*Durrant v. Branksome U.D.C.*, [1897] 2 Ch. 291; 41 Digest 21, 161). But water from a road which has been tar sprayed may be "noxious matter" (*Dell v. Chesham U.D.C.*, [1921] 3 K. B. 427; 26 Digest 408, 1290). Where sewage or filthy water is conveyed into an already polluted stream no offence is committed against this section unless the stream is thereby made fouler (*A.-G. v. Birmingham, etc., Drainage Board*, [1912] A. C. 788; 44 Digest 54, 337). See also *Hesketh v. Birmingham Corpns.*, [1924] 1 K. B. 200, *per BANKES, L.J.*, at p. 266; 38 Digest 153, 29. It is sufficient if the stream is made fouler at the point of discharge (*A.-G. v. Ringwood R.D.C.* (1928), 92 J. P. 63; 44 Digest 47, 330). To constitute a "watercourse" there must be water flowing in a channel between banks more or less defined (*per TENTERDEN, L.C.J.*, in *R. v. Inhabitants of Oxfordshire* (1830), 1 B. & Ad. 301; 26 Digest 573, 2645. See also *Pearce v. Croydon R.D.C.* (1910), 74 J. P. 429; 41 Digest 8, 53; *Maxwell-Wills v. Bromley R.D.C.* (1917), 82 J. P. 12; 41 Digest 31, 227).

(*s*) See *Dell v. Chesham U.D.C.*, *supra*.

By sect. 381 it is provided that nothing in the Act is to authorise a local authority injuriously to affect any reservoir, canal, watercourse, river or stream, or any feeder thereof, or the supply, quality or fall of water therein, without the consent of any person who would, if the Act had not been passed, have been entitled by law to prevent or be relieved against it. A person injured by the breach of the provisions of the above section may proceed against the local authority in an action for damages and an injunction to restrain further breaches (*i*). Further, he has the option of having the matter referred to an arbitrator appointed, in default of agreement, by the President of the Institution of Civil Engineers (*u*).

A person who throws or deposits cinders, ashes, bricks, stone, rubbish, dust, filth, or other matter likely to cause annoyance into or in any river, stream or watercourse or who suffers any such act to be done, is liable to a penalty not exceeding 40*s.* (*a*). [728]

It is also a statutory nuisance, which may be dealt with summarily under the Act, where (*i*) any watercourse is so foul or in such a state as to be prejudicial to health or a nuisance; or (*ii*) any part of a watercourse, not being a part ordinarily navigated by vessels employed in the carriage of goods by water, is so choked or silted up as to obstruct or impede the proper flow of water, and thereby to cause a nuisance or give rise to conditions prejudicial to health (*b*). Offences under sect. 259 may be prosecuted under the Summary Jurisdiction Acts (*c*). Moreover, where a local authority consider that any watercourse or ditch, situate upon land laid out or abutting on land laid out for building should be wholly or partially filled up or covered over, they may by notice require the owner of such land before any building operations are begun, or while they are in progress, wholly or partially to fill up the watercourse or ditch or to substitute therefor a pipe, drain or culvert with all necessary gullies and other means of conveying surface water into and through it (*d*). But the section does not empower an authority to require the execution of works upon the land of any person other than the owner of the land laid out for building without the consent of that person or prejudicially to affect the rights of any person not being the owner of the land so laid out (*e*). Any question as to the reasonableness of the works required to be executed may, on the application of either party, be determined by a court of summary jurisdiction (*f*). [724]

Rivers Pollution Prevention Acts, 1876 and 1893 (*g*).—The Act of 1876 prohibited the creation of new sources of pollution and existing sources of pollution were to be regulated and reformed (*h*). The policy

(*i*) *R. v. Darlington Local Board of Health* (1865), 6 B. & S. 562; 29 J. P. 419; 44 Digest 20, 113.

(*u*) P.H.A., 1936, s. 332; 20 Halsbury's Statutes 531.

(*a*) *Ibid.*, s. 259 (2).

(*b*) *Ibid.*, s. 259 (1).

(*c*) *Ibid.*, s. 296. See as to continuing offences and penalties, s. 297; 29 Halsbury's Statutes 514.

(*d*) *Ibid.*, s. 262.

(*e*) *Ibid.*, s. 262 (4).

(*f*) *Ibid.*, s. 262 (2). As to procedure, see ss. 300—302; 29 Halsbury's Statutes 515, 516. The penalty for contravention of a notice under the section is a fine not exceeding £5 and 40*s.* for each day the offence continues after conviction (*ibid.*, s. 262 (3)).

(*g*) 20 Halsbury's Statutes 316.

(*h*) See *Butterworth v. West Riding of Yorkshire Rivers Board*, [1909] A. C. 45;

of the Act is to stop the pouring of foul water and other noxious matter into streams ; in short, to prevent streams being turned into sewers (*i*). [725]

Definition of Terms (k).—If not inconsistent with the context : “ Person ” includes any body of persons, whether corporate or unincorporate ; “ Stream ” includes the sea to such extent, and tidal waters to such point, as may, after local inquiry and on sanitary grounds, be determined by the Local Government Board (now the M. of H.), by order published in the *London Gazette*. Save as aforesaid, it includes rivers, streams (*l*), canals, lakes and watercourses, other than watercourses at the passing of the Act mainly used as sewers (*m*), and emptying direct into the sea, or tidal waters which have not been determined to be streams within the meaning of the Act by any such order as aforesaid ; “ Solid matter ” does not include particles of matter in suspension in water (*n*) ; “ Polluting ” does not include innocuous discolouration ; “ Sanitary authority ” means, outside the Metropolis, any urban or rural sanitary authority acting in the execution of the P.H.A., 1875 (*o*). [726]

The Act deals with pollution under four heads, viz :

Pollution by Solid Refuse.—It is an offence for any person (*p*) to put, or cause to be put or to fall, or knowingly permit to be put or to fall or to be carried into any stream (*p*) the solid refuse of any manufactory, manufacturing process or quarry, or any rubbish or cinders, or any other waste or any putrid solid matter (*q*), so as, either singly or in combination with (*r*) other similar acts of the same or any other person, to interfere with its due flow (*s*) or to pollute its waters (*t*). In proving interference with the due flow of any stream, or the pollution

44 Digest 42, 301, *per Lord Macnaghten*. The powers given by this Act are not to prejudice or affect any other rights or powers existing or vested in any person by Act of Parliament, law or custom (*s. 10*). Nor does the Act apply to or affect the lawful exercise of any rights of impounding or diverting water (*s. 17*).

(i) *Per Lord Lornburn in Airdrie Magistrates v. Lanark County Council*, [1910] A.C. 200 ; 44 Digest 42, 299. Since the passing of the Rivers Pollution Prevention Act, 1870, a natural stream cannot in law be turned into a sewer by the discharge of sewage into it (*George Legge & Son, Ltd. v. Wenlock Corp.*, [1938] A.C. 204 ; [1938] 1 All E.R. 37 ; Digest Supp.).

(k) Rivers Pollution Prevention Act, 1876, s. 20 ; 20 Halsbury's Statutes 323.

(l) As to the meaning of “ stream ” in its natural sense apart from this statutory definition, see *M'Nab v. Robertson*, [1807] A.C. 184 ; 10 Digest 146, 1001.

(m) See *Airdrie Magistrates v. Lanark County Council, supra* ; *George Legge & Son, Ltd. v. Wenlock Corp.*, *supra* ; *A.-G. v. Lewes Corp.*, [1911] 2 Ch. 405 ; 44 Digest 52, 367.

(n) See *River Ribble Joint Committee v. Halliwel*, [1890] 2 Q.B. 385 ; 44 Digest 41, 296 ; *West Riding of Yorkshire Rivers Board v. Rawson* (1903), 67 J.P. 407 ; 44 Digest 44, 310.

(o) 13 Halsbury's Statutes 628 ; now P.H.A., 1936.

(p) See definition, s. 20 ; 20 Halsbury's Statutes 323.

(q) See definition in s. 20 and cases cited in note (e), *ante*.

(r) This expression does not imply anything in the nature of conspiracy or joint action. It apparently refers to simultaneous action or a contribution to a cumulative effect. Thus, one manufacturer may cast his refuse into a stream with little effect, yet if at the same time other manufacturers were doing the same sort of thing the cumulative effect would produce the evil aimed at. See *Blair and Sumner v. Deakin* (1887), 52 J.P. 327 ; 44 Digest 38, 271. Also *Stollmeyer v. Petroleum Development Co., Ltd.*, [1918] A.C. 408, n ; 44 Digest 52, 373.

(s) The word “ due ” would seem to imply its natural flow. Thus, the velocity of the stream must not be made slower nor the stream diverted from its proper channel.

(t) S. 2. Pollution does not include innocuous discolouration. See definition in s. 20.

of any stream, evidence may be given of repeated acts which together cause such interference or pollution, although each act taken by itself may not be sufficient for that purpose (u). [727]

Pollution by Sewage.—It is an offence for any person to cause to fall or flow, or knowingly permit (a) to fall or flow or to be carried into any stream any solid or liquid sewage matter (b). Such offence is not deemed to have been committed if (i.) the sewage matter is conveyed into the stream by means of a channel used, constructed, or in course of construction for such purpose at the date of the passing of the Act (c), and (ii.) the person shows to the satisfaction of the court that he is using the best practicable and available means to render the sewage harmless (d). [728]

Pollution by Trade Effluents.—The pollution of a stream by liquid from a factory or manufacturing process is an offence under sect. 4. As to this, see title TRADE EFFLUENTS. [729]

Pollution from Mining.—A person commits an offence under sect. 5 who causes to fall or flow or knowingly permits to fall or flow or to be carried into any stream (i.) any solid matter from any mine in such quantities as to prejudicially interfere with its due flow (e), or (ii.) any poisonous, noxious or polluting solid or liquid matter proceeding from any mine, other than water in the same condition as that in which it has been drained or raised from such mine, unless he shows to the satisfaction of the court having cognisance of the case that he is using the best practicable and reasonably available means to render harmless such poisonous, noxious or polluting matter. Generally, as to drainage from mines, see title MINES AND MINERALS, Vol. IX., p. 201. [730]

ENFORCEMENT OF STATUTORY PROVISIONS (f)

Authorities to Institute Proceedings.—Proceedings to enforce the provisions of the Rivers Pollution Prevention Acts in respect of pollution by solid refuse and sewage may be taken by (i.) any sanitary authority in relation to any stream within or passing through, or by, any part of their district, whether the offence is committed within or without their district (g); (ii.) any county council, or joint committee

(u) S. 2. Pollution does not include innocuous discolouration. See definition in s. 20.

(a) By the Rivers Pollution Prevention Act, 1893; 20 Halsbury's Statutes 345, where any sewage matter falls or flows or is carried into any stream after passing through or along a channel vested in a sanitary authority, that authority is deemed to knowingly permit it. To be guilty of the offence of "causing to flow" a person must be aware that the liquid is flowing and that reasonable care on his part could have prevented it (*Moses v. Midland Rail. Co.* (1915), 84 L. J. (K. B.) 2181; 25 Digest 48, 487).

(b) S. 3. There is no definition of "sewage matter." It would seem to mean fluid and feculent matter from houses, etc., usually conveyed by sewer.

(c) August 15, 1876.

(d) S. 3. As to discharge of sewage by a sanitary authority, see title SEWAGE DISPOSAL.

(e) See note (s), *ante*, p. 278.

(f) Proceedings for offences under the special enactments and the pollution provisions of the P.H.A.s. have been mentioned under the respective statutes. See *ante*, pp. 268 *et seq.*

(g) S. 8. By virtue of s. 69 of the P.H.A., 1875, sanitary authorities may also, with the sanction of the Attorney-General, take proceedings by indictment, bill in Chancery, action or otherwise, for protecting any watercourse within their jurisdiction from pollution by sewage either within or without their district. This section is limited to pollution by sewage. For other cases of pollution proceedings must be taken under the Rivers Pollution Prevention Acts.

empowered by provisional order (*h*) ; (iii.) the Lee Conservancy Board in respect of the area under their jurisdiction (*i*) ; (iv.) any fishery board (*k*). Proceedings may also be instituted by any person aggrieved by the commission of any such offence (*l*). [731]

Constitution of Joint Committees.—On the application of a county council, the Minister of Health may, by provisional order (*m*), constitute a joint committee or other body representing all the administrative counties through or by which a river, or any specified portion of a river, or any tributary thereof passes, and may confer on such committee or body the powers of a sanitary authority under the Rivers Pollution Prevention Act, 1876 (*n*). The order may make provision respecting the constitution and proceedings of the committee or body, payment of their expenses, and the audit of the accounts of such committee or body and their officers (*o*).

A similar joint committee or other body may be constituted for a catchment area or combination of catchment areas by provisional order under sect. 14 of the L.G.A., 1888. The order may be made by the Minister of Health of his own motion, without any application by the council of any of the counties concerned (*p*). Any such order must provide for the inclusion on the committee or body, so far as may conveniently be, of the persons appointed by county or county borough councils to be members of the catchment boards of the catchment areas concerned (*q*).

The following joint committees were constituted by provisional order to enforce the provisions of the Rivers Pollution Prevention Act in the areas specified therein, viz : (i.) the joint committee of the Rivers Mersey and Irwell ; (ii.) the joint committee of the River Ribble (*r*) ; and (iii.) the joint committee for the rivers of the West Riding of Yorkshire (*s*). [732]

It was quickly realised that the mere establishment of a joint committee to execute the powers of the Act of 1876 was inadequate to deal

(*h*) L.G.A., 1888, s. 14 ; 10 Halsbury's Statutes 697. By this section county councils have, in relation to so much of any stream as is situate within or passes through or by any part of their county, the same powers and duties as if they were a sanitary authority within the meaning of the Rivers Pollution Prevention Act, 1876.

(*i*) S. 9. Within their area the Board have the powers of a sanitary authority under the Act to the exclusion of any other authority. They may also enforce the provisions of the Lee Conservancy Act, 1868 (31 & 32 Vict. c. cliv.). See also Middlesex County Council Act, 1898 (61 & 62 Vict. c. ccl.), and the Lee Conservancy Acts, 1900 (63 & 64 Vict. c. cxvii.) and 1921 (11 & 12 Geo. 5, c. lxxviii.).

(*k*) Salmon and Freshwater Fisheries Act, 1923, s. 55 ; 8 Halsbury's Statutes 812.

(*l*) Rivers Pollution Prevention Act, 1876, s. 8.

(*m*) As to the procedure for the making of provisional orders, see title PROVISIONAL ORDERS. They require to be confirmed by Parliament.

(*n*) L.G.A., 1888, s. 14 (3). Where a river or any tributary thereof is situate partly in England and partly in Scotland a joint committee may be constituted under the Rivers Pollution Prevention (Border Councils) Act, 1898 ; 20 Halsbury's Statutes 345.

(*o*) *Ibid.*, sub-s. (3).

(*p*) Land Drainage Act, 1930, s. 56 ; 23 Halsbury's Statutes 569.

(*q*) *Ibid.*

(*r*) These provisional orders were confirmed by the Local Government Board's Provisional Orders Confirmation (No. 10) Act, 1891 (54 & 55 Vict. c. lxxi.).

(*s*) Confirmed by the Local Government Board's Provisional Orders Confirmation (No. 16) Act, 1893 (56 & 57 Vict. c. cxxxii.). The title of this joint committee has been changed to the West Riding of Yorkshire Rivers Board.

with the mischief aimed at in connection with the Rivers Mersey and Irwell, and that amendment of those statutory provisions was necessary. The Mersey and Irwell Joint Committee Act, 1892 (*t*), was accordingly passed. The preamble of the Act recited that the polluted and filthy condition of the specified parts of the Rivers Mersey and Irwell and their tributaries required improvement and that the restrictions contained in the Act of 1876 were such as to preclude effective action by the joint committee. Special and wider powers (somewhat in advance of the powers under the Act of 1876) were thereupon enacted as regards (i.) the prohibition of putting solids into rivers; (ii.) the prohibition of sending liquid sewage into rivers; (iii.) the prohibition of sending trade effluents into rivers; and (iv.) penalties and procedure. Heavy penalties are imposed and made recoverable in a court of summary jurisdiction by the joint committee or their clerk or other duly authorised officer. The right of appeal to quarter sessions against the decision of a court of summary jurisdiction is given. The Mersey and Irwell joint committee has jurisdiction in relation to so much of the River Irwell and tributaries thereof and to so much of the River Mersey and tributaries thereof above the point of intersection thereof by the southern boundary of the county borough of Warrington as passes through the counties of Lancaster and Chester, or between them, or through or by the county boroughs of Bolton, Bury, Manchester, Oldham, Rochdale, Salford and Stockport. [733]

The Ribble joint committee has jurisdiction over so much of the River Ribble and tributaries thereof and of the Rivers Darwen and Douglas and the streams running into the Crossens channel as passes through the county of Lancaster, or through or by the county boroughs of Blackburn, Burnley, Preston and Wigan.

The West Riding Order was similar in form to the Mersey and Irwell Order. The joint committee, however, obtained the passing of the West Riding of Yorkshire Rivers Act, 1894 (*u*), whereby the name of the joint committee was changed to "the West Riding of Yorkshire Rivers Board" and powers were conferred on the Board somewhat in advance of those conferred in the Mersey and Irwell Act.

The board has jurisdiction in relation to so much of every river or tributary thereof as passes through or by the county of the West Riding of Yorkshire, or through or by the county boroughs of Bradford, Halifax, Huddersfield, Leeds and Sheffield. The county borough of Rotherham was added by virtue of the Act (2 Edw. 7, c. cxx.). [734]

In 1931 the M. of H., on the application of the councils of the county borough of Chester and the administrative county of Chester, made a provisional order constituting a joint committee to enforce the Rivers Pollution Prevention Act, 1876, in respect of the River Dee and its tributaries above the weir at the Old Bridge in the city of Chester. The order provided for membership from the county councils of Chester, Denbigh, Flint, Merioneth and Salop and the county borough of Chester. It contained a provision that the setting up of the joint committee should be postponed for a period of two years, or such longer period as might appear to the Minister, at the expiration of the two years, to be warranted by the conditions then prevailing. The provisional order was confirmed by Parliament (21 & 22 Geo. 5, c. lvii.). [735]

(*t*) 55 & 56 Vict. c. cxvi.

(*u*) 57 & 58 Vict. c. clxvi.

Tribunal and Proceedings available.—Offences may be restrained by summary order of the county court of the district (*a*). The order may require the offender to abstain from the commission of an offence or to perform a duty in manner specified; and the court may insert such conditions as to time and mode of action and may suspend or rescind any order on such undertaking being given or condition performed, and generally give such directions as the court thinks fit (*b*). Before making an order the court may remit to skilled parties to report on the best practicable and available means and the nature and cost of the works. The reasonableness of the expense must be taken into consideration (*c*). Offenders in default are liable to a penalty not exceeding £50 a day; and, if the default continues for not less than a month or such less period as may be prescribed in the order, to the expenses of any person appointed by the court to carry such order into effect (*d*). There is a right of appeal to the High Court against a decision of the county court by way of case stated (*e*). Proceedings in the county court may be removed into the High Court on terms if it appears to a judge of the High Court desirable that the case should be tried in the first instance in the High Court (*f*). [736]

Restriction on Proceedings.—No proceedings can be taken for any offence until the expiration of two months after written notice thereof has been given to the offender (*g*). Moreover, a certificate granted by a M. of H. Inspector that the means used for rendering harmless the sewage or other polluting matter are the best and only practicable and available means in the particular circumstances, is to be conclusive in all proceedings (*h*). [737]

LONDON

By virtue of L.G.A., 1888, sect. 14, the L.C.C. is empowered to enforce the provisions of the Rivers Pollution Prevention Acts, 1876 and 1893. The Metropolitan Police Act, 1889, sect. 60 (3), prohibits the depositing of rubbish, etc., in any stream or water-course. Provisions as to pollution of the River Thames and its tributaries are contained in the Thames Conservancy Act, 1932, sects. 119–138, and the Port of London (Consolidation) Act, 1920, sects. 226–242, as amended by sect. 20 of the Port of London (Various Powers) Act, 1932. [738]

(*a*) 1876 Act, s. 10.

(*b*) *Ibid.*

(*c*) *Ibid.*

(*d*) *Ibid.*

(*e*) S. 11.

(*f*) *Ibid.* See *West Riding of Yorkshire Rivers Board v. Ravensthorpe U.D.C.* (1907), 71 J. P. 209; 44 Digest 51, 361.

(*g*) S. 13. This section does not apply to proceedings to enforce penalties for non-compliance with an order (*West Riding of Yorkshire Rivers Board v. Heckmondwike U.D.C.* (1914), 78 J. P. 190; 44 Digest 50, 358).

(*h*) S. 12. The certificate is valid for not exceeding two years and is renewable. A person aggrieved by the grant or withholding of a certificate may appeal to the M. of H. (*ibid.*).

POLYTECHNICS

See TECHNICAL AND COMMERCIAL EDUCATION.

PONDS

PAGE		PAGE	
INTRODUCTORY - - -	- 278	PREVENTION OF POLLUTION - - -	- 279
CLEANSING OF PONDS - - -	- 278	LONDON - - -	- 280
FENCING OF PONDS - - -	- 279		

See also titles :

LAKES IN PLEASURE GROUNDS ;
OPEN SPACES ;

PUBLIC PARKS ;
SKATING.

Introductory.—There appears to be no statutory definition of the term "pond," but a local authority in their capacity as the custodian of the public health have had conferred upon them a number of powers and duties in regard to ponds, particularly under the P.H.As., 1875 to 1936. A pond is presumed to be the property of the owner of the land by which it is surrounded. Sect. 64 of the P.H.A., 1875 (a), re-enacted in sect. 124 of the P.H.A., 1936 (b), vested all existing public cisterns, pumps, wells, reservoirs, conduits, and other works used for the gratuitous supply of water to the inhabitants of the district of a local authority in that authority, who may cause the same to be maintained and supplied with wholesome water, or may substitute other works equally convenient. A natural pond which had been used by the public for a number of years for the purpose of watering cattle, was held to be within this section (c). It should be noted that although under sect. 67 of the Highway Act, 1885 (d), highway authorities have power to make, scour, cleanse and keep open all ditches, gutters, drains, or watercourses, this section does not give the local authority power to discharge surface water from the road into a pond which does not form part of the drainage system belonging to the local authority (e). Any person unlawfully and maliciously cutting through, breaking down, or otherwise destroying the dam or floodgate of any millpond, reservoir, or pool is guilty of a misdemeanour (f). [739]

Cleansing of Ponds.—By sect. 260 of the P.H.A., 1936 (g), parish councils are empowered to deal with any pond, pool, or place containing or used for the collection of any drainage, filth, stagnant water, or matter likely to be prejudicial to health, by draining, cleansing, covering it, or otherwise preventing it from being prejudicial to health, but so as

- (a) 13 Halsbury's Statutes 652.
- (b) 29 Halsbury's Statutes 414.
- (c) *Leadgate Local Board v. Bland* (1881), 45 J. P. 526.
- (d) 9 Halsbury's Statutes 83.
- (e) *Croydon v. Sunbury-on-Thames U.D.C.* (1898), 67 L.J. (Ch.) 585 ; 41 Digest 10, 73.
- (f) Malicious Damage Act, 1861, s. 32 ; 4 Halsbury's Statutes 571 ; Salmon and Freshwater Fisheries Act, 1928, s. 10 ; 8 Halsbury's Statutes 785.
- (g) 29 Halsbury's Statutes 488, reproducing s. 8 (1) of the L.G.A., 1894 ; 10 Halsbury's Statutes 780.

not to interfere with any private right or with any public drainage, sewerage, or sewage disposal works. The council of a borough or urban or rural district may exercise the like powers, without prejudice to any other power they may possess (h).

Any pond or pool so foul or in such a state as to be prejudicial to health is a nuisance for the purposes of Part III. of the P.H.A., 1936 (i), which lays down procedure for dealing summarily with statutory nuisances (k). [740]

Fencing of Ponds.—Sect. 30 of the P.H.A. Amendment Act, 1907 (l), gives power to a local authority to require the repair or enclosure of dangerous places. It provides that if in any situation fronting, adjoining, or abutting on any street or public footpath, any pond, dam or bank (*inter alia*) is for want of sufficient repair, protection, or enclosure, dangerous to persons lawfully using the street or footpath, the local authority may by notice (m) in writing served upon the owner require him within the period specified in the notice to repair, remove, protect, or enclose the same so as to prevent any danger therefrom. If the owner neglects to comply with the notice within the period specified, the local authority may cause such works as they think proper to be done for effecting such repair, removal, protection, or enclosure, and the expenses so incurred are payable by the owner and may be recovered summarily as a civil debt. This section is only applicable where the Minister of Health, on the application of the local authority, has made an order declaring it to be in force in the district of the local authority, or, where the local authority are a R.D.C., in any contributory place within the district of the local authority, and any such order may specify conditions subject to which the section shall be in force (n). [741]

Prevention of Pollution.—A local authority are not authorised to construct or use any public or other sewer, drain or outfall, for the purpose of conveying foul water into any natural or artificial pond or lake, until such water has been so treated as not to affect prejudicially the purity and quality of the water in such pond or lake (o).

Water is protected from pollution by gas washings by sect. 68 of the P.H.A., 1875 (p), whereby any person (q) engaged in the manufacture of gas who causes or suffers to be brought or to flow into any reservoir, aqueduct, pond, or place for water, any washing or other substance produced in making or supplying gas, or who wilfully does any act connected with the making or supplying of gas whereby the water in any such reservoir, aqueduct, pond, or place for water is fouled, is rendered liable for such offence to a penalty of £200, and after the expiration of twenty-four hours' notice from the local authority or the person to whom the water belongs, a further sum of £20 for every day

(h) P.H.A., 1936, s. 260 (2).

(i) *Ibid.*, s. 259.

(k) See Part III.; 29 Halsbury's Statutes 394—406.

(l) 18 Halsbury's Statutes 922.

(m) For a notice for use under this section, see 12 Encl. Forms, 605.

(n) See title *ADOPTIVE ACTS*, Vol. I., p. 111.

(o) P.H.A., 1936, s. 30; 29 Halsbury's Statutes 348.

(p) 18 Halsbury's Statutes 653.

(q) For the purposes of the P.H.A., 1875, the term "person" includes any body of persons, whether corporate or unincorporate, see s. 4; 18 Halsbury's Statutes 624.

during which the offence is continued. The penalty may be recovered, in the case of water belonging to or under the control of the local authority, by the local authority, and in any other case by the person into whose water such washing or other substance is conveyed or flows, or whose water is fouled by any such act. The local authority may take proceedings against the offender in any case where the owner of the water fails to take proceedings after notice to him from the local authority of their intention to proceed for the penalty. Provisions similar to those of this section are contained in sect. 21 of the Gasworks Clauses Act, 1847 (*r*), and also in sect. 62 of the Waterworks Clauses Act, 1847 (*s*), which is incorporated with the P.H.A., 1936, for the purpose of enabling a local authority to supply water (*t*).

The authority or other persons by whom a cemetery is constructed are liable to a penalty of £50, and to a further penalty of £10 per day if they suffer to be brought or to flow into any pond (amongst other places) any offensive matter from the cemetery whereby the water therein is fouled. This is provided by sects. 20 to 22 of the Cemeteries Clauses Act, 1847 (*u*). This Act is incorporated with the P.H. (Interments) Act, 1879 (*a*), which is to be construed as one with the Public Health Acts. Special protection from poisonous matter and trade effluents is afforded to water containing fish by sect. 8 of the Salmon and Freshwater Fisheries Act, 1928 (*b*). [742]

London.—In London any pool which is so foul or in such a state as to be a nuisance or injurious or dangerous to health, may be dealt with summarily as a nuisance under sect. 82 of the P.H. (London) Act, 1936 (*c*). Sect. 83 of the Act requires every sanitary authority (*i.e.* metropolitan borough council) to drain, cleanse, cover or fill up all ponds and pools containing or used for the collection of any drainage, filth, water, matter or thing of an offensive nature, or likely to be prejudicial to health, which may be situate in their district. It is also the duty of the sanitary authority to cause notice to be served on the person who causes any such nuisance, or on the owner or occupier of any premises whereon the same exists, requiring him, within the time specified in such notice, to remedy such nuisance. Failure to comply with such notice renders the offender liable to a fine not exceeding £5 and to a further fine not exceeding 40s. for each day during which the offence continues. Alternatively, the sanitary authority may enter on the premises and execute such works as may be necessary for the abatement of the nuisance, and may recover the expenses thereby incurred from the owner of the premises. Where the sanitary authority think it reasonable to do so, they may defray all or any portion of such expenses.

If the work interferes with or prejudicially affects any ancient mill, or any right connected therewith, the sanitary authority must compensate all persons sustaining damage thereby in the manner provided by the Metropolis Management Act, 1855, sect. 225 (*d*), or, if they think fit, they may by agreement purchase such mill, or any such right connected therewith.

(*r*) 8 Halsbury's Statutes 1238.

(*s*) 20 Halsbury's Statutes 207.

(*t*) P.H.A., 1936, s. 120; 29 Halsbury's Statutes 412.

(*u*) 2 Halsbury's Statutes 260.

(*a*) 18 Halsbury's Statutes 796.

(*b*) 8 Halsbury's Statutes 788.

(*c*) 26 Geo. 5 & 1 Edw. 8, c. 50.

(*d*) 11 Halsbury's Statutes 980.

An appeal against any notice or act of a sanitary authority under this section lies to the L.C.C. whose decision thereon is final (*e*).

The Metropolitan Police Act, 1889 (*f*), prohibits the depositing of rubbish in ponds, etc. [743]

(*e*) P.H. (London) Act, 1936, s. 83.
(*f*) S. 60 (3); 19 Halsbury's Statutes 123.

PONIES

See HORSES, PONIES, MULES OR ASSES.

POOR LAW

See PUBLIC ASSISTANCE.

POOR LAW AUTHORITIES

See PUBLIC ASSISTANCE AUTHORITIES.

POOR LAW IN LONDON

See PUBLIC ASSISTANCE IN LONDON.

POOR LAW INSTITUTION

See PUBLIC ASSISTANCE INSTITUTION.

POOR LAW MEDICAL OFFICERS

	PAGE		PAGE
GENERAL OUTLINE - - -	282	DISMISSAL OR REMOVAL FROM OFFICE	284
APPOINTMENT AND QUALIFICA-	282	DUTIES OF DISTRICT MEDICAL	284
TIONS - - -	282	OFFICER - - -	284
PANEL SYSTEM - - -	283	DUTIES OF INSTITUTION MEDICAL	285
ORGANISATION OF DUTIES -	283	OFFICER - - -	285

*See also titles : MEDICAL OFFICER OF HEALTH ;
MEDICAL SUPERINTENDENT ;
PUBLIC ASSISTANCE.*

General Outline.—The main provisions as to poor law medical officers, both district and institutional, are contained in the Public Assistance Order, 1930, which will be referred to in this title as the 1930 Order (*a*). There are also some references to the subject in the Relief Regulation Order, 1930 (*b*), and the Public Assistance (Casual Poor) Order, 1931 (*c*).

The term "medical officer" for poor law purposes means a medical officer of a poor law establishment or a district medical officer (*d*). District medical officers and institution medical officers are appointed by each county and county borough council as the public assistance authority. [744]

Until the transfer of the poor law functions from boards of guardians by the L.G.A., 1929, it was the usual practice, except in a few areas, for appointments as district medical officers to be held by general medical practitioners engaged in private practice. This method is still in operation in many parts of the country, but in some districts the medical officers are whole-time officers of the local authority and either carry out district medical work only or, which is more usual, devote part of their time to district work and the remainder to other official duties, in connection, for example, with hospitals or institutions. In recent years the practice has been commenced of appointing a panel of local medical practitioners in a given area who are willing to carry out the duties of the district medical officer. This is known as the "panel" or "free choice" system. This system can be applied only in respect of well-defined areas in which vacancies in the offices of district medical officers make such a course practicable. [745]

Appointment and Qualifications.—A district medical officer must be appointed for every relief district (*e*). A medical officer must also be appointed for every poor law institution, except in the case of a hospital when a medical superintendent must be appointed (*ee*). (See title MEDICAL SUPERINTENDENT.) Such an appointment must also be made for every children's home or separate casual ward.

A medical officer is included among the officers who are deemed to be senior poor law officers (*f*).

(*a*) S.R. & O., 1930, No. 185 ; 12 Halsbury's Statutes 1053—1090.

(*b*) S.R. & O., 1930, No. 186.

(*c*) S.R. & O., 1931, No. 136.

(*d*) Relief Regulation Order, 1930, Art. 2 (S.R. & O., 1930, No. 186) ; 12 Halsbury's Statutes 1090.

(*e*) Public Assistance Order, 1930, Art. 142 ; 12 Halsbury's Statutes 1075.

(*ee*) *Ibid.*, Art. 148.

(*f*) *Ibid.*, Art. 144.

The remuneration of a medical officer is in the discretion of the council (*g*), and is usually by a fixed annual salary, but his appointment should specify any services for which he is to be paid additional remuneration or special fees (*h*). The appointment is subject to superannuation if the officer was a transferred poor law officer or occupies a designated post or is subject to a local superannuation scheme (*i*).

It is the duty of each district medical officer to nominate a duly qualified medical practitioner to act as his deputy. Similarly a medical officer of an institution must nominate some medical practitioner his deputy in that capacity if there is no assistant medical officer.

No person may be appointed as an assistant to a medical officer unless he is a duly qualified medical practitioner (*j*).

A medical officer must supply requisite medicines to persons whom he attends unless the terms of his appointment provide for the council paying for the dispensing of medicines supplied by a chemist on his prescription (*k*). [746]

Panel System.—Where a panel system is in force the approval of the Minister of Health is required to the consequential departures from certain provisions of the 1930 Order. This arrangement ensures free choice amongst the persons on the panel. An applicant for medical relief may choose a doctor from the panel. It is customary for the patient not to be allowed to change his doctor for three months, but the practice varies, and there is no uniform method in operation with regard to the administration of the system in those parts of the country where the panel system is in operation. In any case of emergency or where the applicant has no particular choice, the relieving officer allocates the patient to one of the medical practitioners on the panel, usually the one nearest his home. The remuneration is usually by capitation payment for each person treated and may include drugs, or arrangements may be made for drugs to be supplied by chemists. The system in varying forms is in operation *inter alia* in the counties of Cambridge, East Sussex, Glamorgan, Kent and Wiltshire, or parts thereof, and in the county boroughs of East Ham, Newcastle-upon-Tyne and Warwick. [747]

Organisation of Duties.—The duties of district medical officer and institution medical officer are prescribed by the 1930 Order. These officers act in close collaboration with the M.O.H. who is the advisor of the council on public health matters (*l*).

Since the transfer from boards of guardians the remuneration has been standardised in many counties. Such standardisations can, however, only apply subject to the rights of transferred officers under the L.G.A., 1929 (*m*).

In one large county, each district medical officer receives a basic salary and at the end of each year the number of persons in his district who have received medical relief is ascertained and, if the salary represents less than 10s. per patient, an adjustment is made to this amount. In one county the remuneration is on a capitation basis per person, the annual payment being 22s. 6d. in urban and 25s. 6d. in rural districts. In another county the remuneration is 5s. per annum for

(*g*) Public Assistance Order, 1930, Art. 151.

(*h*) *Ibid.*, Art. 161.

(*i*) See title SUPERANNUATION.

(*j*) Public Assistance Order, 1930, Art. 163; 12 Halsbury's Statutes 1077.

(*k*) *Ibid.*, Art. 166.

(*l*) *Ibid.*, Art. 165; *ibid.*, 1078.

(*m*) 10 Halsbury's Statutes 883.

each poor law case. In one county borough each district medical officer receives a basic salary and his annual remuneration is made up to an average representing 1s. per service. These are illustrations of varying methods of remuneration. There is no established basis for the whole country. [748]

The district medical officer was, before the operation of the L.G.A., 1929, responsible only to the Board of Guardians (and the Local Government Board or Minister of Health). Since that date, though he is responsible to the public assistance committee acting on behalf of the council, he has become more closely associated with the public medical services of the local authority, and the administration of the work transferred from the poor law authorities has been absorbed into and assimilated with the communal system of preventive medicine (n). [749]

Dismissal or Removal from Office.—As a senior poor law officer a medical officer holds office until he dies or resigns or retires on superannuation or is dismissed by the council, subject to the consent of the Minister, or is removed by the Minister, or is proved to be insane, or until the Minister considers it desirable that his duties should cease, or should be modified. In the last case his continuance in office will terminate at the expiration of three months' notice (o). The council may, however, with the consent of the Minister, determine the appointment of any medical officer at any time before or at the expiration of the first year of his service by giving him three months' notice.

It was previously the view of the M. of H. that a medical officer should be appointed to hold office permanently, but in recent years it has been the practice, with the tacit concurrence of the Minister, for many appointments of medical officers to be made temporary so as to enable the council to bring in a panel system or such other revised arrangements as might be considered desirable without the necessity of paying compensation if the officer is dispossessed. [750]

Duties of District Medical Officer.—It is the general duty of the district medical officer to attend all poor persons within his district requiring medical attention, normally on an order of the council or relieving officer, and persons recorded on the permanent medical relief list (p).

He must inform the relieving officer of any person whom he has attended without an order. A record of all attendances in the form prescribed by the First Schedule of the 1930 Order must be kept, and submitted to the appropriate committee at every meeting. This record must also be subject to inspection by the relieving officer.

He must give to the council whenever required any reasonable information in respect of the case of any poor person who is or has been in his care, or any certificate required by the council or its officers respecting such persons.

He must give a certificate in respect of any person applying for relief on account of sickness or accident or bodily or mental infirmity affecting the person or any member of his family who is dependent upon him for support. The certificate must state the nature of the disability (pp).

On the admission of one of his patients to a public assistance institution he must supply the medical officer of the institution with any information in his possession with regard to the patient. [751]

(n) Annual Report of the Chief Medical Officer of the M. of H., 1928.

(o) Public Assistance Order, 1930, Art. 157; 12 Halsbury's Statutes 1076.

(p) *Ibid.*, Art. 166.

(pp) Relief Regulation Order, 1930, Art. 10.

Duties of Institution Medical Officer.—The medical officer of an institution must visit and attend the inmates regularly and at all necessary times, subject to any directions by the management committee. He has special duties regarding infants, persons of unsound mind, or alleged to be of unsound mind, and children transferred from one institution to another (*q*). He must give the officers in charge of the sick all necessary directions with regard to the treatment and nursing of the inmates, and in any case of urgency require the master to obtain the services of a temporary nurse. He must report to the Minister within twenty-four hours the death of any casual occurring either in the casual wards or within twenty-four hours after his transfer to the institution. He must also report to the Minister within twenty-four hours any sudden or accidental death occurring amongst the inmates unless the person was not in receipt of relief at the time of the accident causing his death. He has other duties prescribed by Art. 176 of the 1930 Order. [752]

The medical officer has specially prescribed duties in regard to the keeping of records of patients in the sick wards, mental wards and nurseries (*r*), the supply of special articles required by any inmate, and as to the bathing of and attention to inmates (*s*). He has special duties with regard to casuals, and in particular he must on one day at least in every month medically examine every casual in the casual ward at the time of his visit (*t*). The master must obtain the attendance of the medical officer upon any casual who appears to require medical attention, and must make arrangements to transfer the casual to an appropriate ward or establishment, unless he can possibly be treated in the casual wards. Any application by a casual to see the medical officer and any action taken thereon must be recorded. In certain instances he must be consulted in connection with the punishment of inmates (*u*). [753]

In certain instances the council is under an obligation to obtain the advice of the medical officer before taking action; for instance, in regard to the classification of certain classes of inmates (*a*). Dietary tables for the different classes of inmate can be framed by the council only after obtaining the written advice of the medical officer. He must prescribe dietaries for the inmates of the sick wards and mental wards, and for infants under the age of eighteen months and upwards (*aa*). If he considers that the dietary of any class of inmate is inadequate or unsuitable, he must report accordingly to the Public Assistance Committee (*b*). He may direct that the diet of any individual inmate shall be varied (*c*). Authority can be given for the supply of fermented or spirituous liquors only after recommendation by the medical officer (*d*). [754]

Before making regulations with regard to the visitation of patients in the sick wards, mental wards or nurseries, the advice of the medical officer must be obtained (*e*). The employment of inmates in the institution is subject to any recommendations given on grounds of ill-health or physical or mental capacity by the medical officer (*f*). [755]

(*q*) Public Assistance Order, 1930, Art. 170; 12 Halsbury's Statutes 1082.

(*r*) *Ibid.*, Art. 42.

(*s*) *Ibid.*, Arts. 44, 45.

(*t*) Public Assistance (Casual Poor) Order, 1931, Art. 12.

(*u*) Public Assistance Order, 1930, Arts. 61, 64; 12 Halsbury's Statutes 1063, 1064.

(*a*) *Ibid.*, Art. 30; 12 Halsbury's Statutes 1058.

(*aa*) *Ibid.*, Art. 35.

(*c*) *Ibid.*, Art. 39.

(*e*) *Ibid.*, Art. 69.

(*b*) *Ibid.*, Art. 38.

(*d*) *Ibid.*, Art. 41.

(*f*) *Ibid.*, Art. 54.

POOR LAW OFFENCES

	PAGE		PAGE
INTRODUCTORY - - - - -	286	OFFENCES BY MASTERS AND OFFICERS OF WORKHOUSES - - -	290
FALSE STATEMENT OR NON- DISCLOSURE OF PROPERTY BY APPLICANT FOR RELIEF - - -	286	ASSAULTS ON OFFICERS - - -	291
LEAVING FAMILY CHARGEABLE - -	287	REFUSING TO PERFORM TASK OF WORK - - - - -	291
NEGLECT TO MAINTAIN FAMILY - -	287	REFUSAL TO ALLOW INSPECTION OF DOCUMENTS - - - - -	291
MISBEHAVIOUR OF INSTITUTION INMATES - - - - -	288	REFUSAL TO GIVE EVIDENCE AT INQUIRY - - - - -	291
MISCELLANEOUS OFFENCES - - -	289	DISOBEDIENCE TO RULES AND ORDERS - - - - -	292
INTRODUCTION OF INTOXICATING LIQUORS INTO INSTITUTIONS - -	290	APPRENTICES - - - - -	292

See also titles :

CASUALS ;
PERSONS OF UNSOUND MIND ;
RECOVERY OF POOR RELIEF ;

SETTLEMENT AND REMOVAL ;
VAGRANCY.

Introductory.—The existing law on this subject is contained in the Poor Law Act, 1930 (*a*), and the Vagrancy Act, 1824 (*b*). Offences under these statutes are punishable in a court of summary jurisdiction and the Summary Jurisdiction Acts, 1848 and 1879 (*c*), apply thereto. Proceedings in respect of any poor law offences may be taken by the council of any county or county borough which is the public assistance authority (*d*). Any officer of a county or county borough council may, if duly empowered by the council, take and conduct any proceedings on behalf of the council, before any court of summary jurisdiction, although he is not a certificated solicitor (*e*). Persons committing certain offences classed as "disorderly" and "refractory" in a public assistance institution may be punished otherwise than by a court of summary jurisdiction under the Public Assistance Order, 1930 (*f*). The authorised punishments comprise withdrawal of privileges, reduction of rations, or (up to a specified limit and under specified safeguards) confinement and (in case of boys between 8 and 14) caning (*vide post*, "Misbehaviour of Institution Inmates"). [756]

False Statement or Non-disclosure of Property by Applicant for Relief.—An applicant for relief who does not at the time of application disclose the possession of money in his possession and under his immediate control or other property is to be deemed an idle or disorderly person within the meaning of the Vagrancy Act, 1824 (*g*).

(*a*) 12 Halsbury's Statutes 968—1052.

(*b*) *Ibid.*, 913—921.

(*c*) 11 Halsbury's Statutes 270—291. *Vide* also amending Acts cited in headnote, *ibid.*, at p. 270.

(*d*) Poor Law Act, 1930, s. 152; 12 Halsbury's Statutes 1043.

(*e*) *Ibid.*, s. 155.

(*f*) S.R. & O., 1930, No. 185.

(*g*) Poor Law Act, 1930, s. 20 (8). See title VAGRANCY.

If any person for the purpose of obtaining relief for himself or for any other person, wilfully uses a false statement, he is also to be deemed an idle or disorderly person within the meaning of this section (h). Work coupled with payment may be relief (i). [757]

Leaving Family chargeable.—Every person running away and leaving his wife or his or her child chargeable, and causing chargeability thereby, is deemed to be a rogue or vagabond (h). The running away "must be absconding or concealment or absenting, by going a long distance" (l). This is a question of fact for determination of the justices (m). The husband cannot be convicted if when he parted from his wife she was living on her own means and he had no knowledge of her having since become chargeable (n). The husband may be convicted a second time if, after his release from prison, he fails to take his family out of the workhouse and they still remain chargeable (o).

A woman convicted of a second offence of neglecting to maintain her bastard child, or deserting it whereby it becomes chargeable, is also punishable as a rogue or vagabond (p). [758]

Proceedings may be taken at any time within two years after the commission of the offence. The offence is not complete until there is chargeability (q). The offence under this section is not a continuing offence. It is doubtful whether a man can be punished for running away and leaving his wife's illegitimate child chargeable as the word "child" means legitimate child (r).

A married woman, not having property (s), if deserted by her husband, cannot be convicted for running away and leaving her children chargeable (t).

Under the Poor Relief (Deserted Wives and Children) Act, 1718 (u), by the warrant of two justices the overseers might take and seize so much of the goods or the rent of any land of a husband or parent leaving a wife or children chargeable to the parish as represented the expense of the maintenance of his family. It is doubtful whether these rights of the overseers were transferred to boards of guardians by the Poor Law Amendment Act, 1834. By sect. 165 of the Poor Law Act, 1930 (w), any powers which might have been exercisable under the section by boards of guardians were transferred to the councils of counties and county boroughs. [759]

Neglect to maintain Family.—Every person who is wholly or in part able to maintain himself or herself or his or her family by work or other means, and wilfully refuses or neglects so to do, causing chargeability thereby, is deemed to be an idle or disorderly person (y). If a

(h) Poor Law Act, 1930, s. 150.

(i) *Reeve v. Walker*, [1932] 1 K. B. 454; Digest (Supp.).

(k) Vagrancy Act, 1824, s. 4; 12 Halsbury's Statutes 915.

(l) *Cambridge Union v. Parr* (1861), 10 C. B. (N. S.) 99; 37 Digest 362, 1643.

(m) *Pallin v. Buckland* (1911), 105 L. T. 197; 37 Digest 362, 1645.

(n) *Sweeney v. Spooner* (1863), 3 B. & S. 329; 37 Digest 362, 1639.

(o) *Bannister v. Sullivan* (1904), 91 L. T. 380; 37 Digest 363, 1649.

(p) Poor Law Amendment Act, 1844, s. 6; 2 Halsbury's Statutes 10.

(q) *Reeve v. Yeates* (1862), 31 L. J. (M. C.) 241; 37 Digest 363, 1646.

(r) *R. v. Maude* (1842), 2 Dowl. (N. S.) 58; 37 Digest 362, 1640.

(s) Law Reform (Married Women and Tortfeasors) Act, 1935; 28 Halsbury's Statutes 104.

(t) *Peters v. Cowie* (1877), 2 Q. B. D. 131; 37 Digest 362, 1641.

(u) 12 Halsbury's Statutes 911.

(x) *Ibid.*, 1040.

(y) Vagrancy Act, 1824, s. 3; 12 Halsbury's Statutes 913.

husband *bona fide* believes that his wife has committed adultery there is no offence (*a*). An erroneous belief that the husband has been relieved of the common law liability to maintain his wife is no defence (*b*). An offence is committed where the wife asks to be allowed to return to her husband and he refuses to receive or maintain her (*c*). It is not necessary to show that the husband was an idle person who refused to work if he is in fact capable of maintaining his family by work, and neglects or refuses so to do (*d*). A person cannot be convicted for this offence if he becomes chargeable owing to delirium tremens brought on by excessive drinking (*e*). [760]

An offence may be committed if a person wilfully refuses to work while taking part in a strike (*f*). There is no offence if the refusal to work was reasonable (*g*). It is not sufficient if there is only evidence that the man had been seen at work (*h*). The man must have had knowledge of the application for relief (*i*). There can be no conviction if the wife refuses to live with her husband (*k*), or if the wife is living in adultery with another man (*l*). He is, however, liable if he connived at his wife's adultery, and then tells her to leave him (*m*). If the husband should afterwards allow his wife to return, her previous adultery will not be any defence. In a charge under this section it is not necessary to give direct evidence of the marriage, but the justices will be justified in inferring the marriage from evidence of cohabitation, reputation or other circumstances (*n*). [761]

Any woman neglecting to maintain her bastard child if she is wholly or partly able to do so, and causing chargeability thereby, is punishable as an idle or disorderly person, and for a second offence or for deserting her bastard child whereby it becomes chargeable, as a rogue and vagabond (*o*). [762]

Misbehaviour of Institution Inmates.—Any inmate of a workhouse who is guilty of drunkenness or other misbehaviour is, on summary conviction, liable to be imprisoned, in the case of the first offence, for a term not exceeding twenty-one days; in the case of a second or subsequent offence, for a term not exceeding forty-two days (*p*). A court of summary jurisdiction for the purposes of this section may consist of a single justice but in that case the penalty imposed is not to exceed imprisonment for a term of fourteen days. The term "other misbehaviour" is limited to conduct of a disorderly, violent or offensive nature (*q*). The master or porter of a workhouse may arrest without

- (*a*) *Morris v. Edmonds* (1897), 77 L. T. 56; 37 Digest 358, 1609.
- (*b*) *Roberts v. Regnart* (1921), 126 L. T. 667; 37 Digest 234, 262.
- (*c*) *Biggs v. Burridge* (1924), 89 J. P. 75; 37 Digest 360, 1623.
- (*d*) *Carpenter v. Stanley* (1868), 33 J. P. 37; 37 Digest 360, 1620.
- (*e*) *St. Saviour's Union v. Burbridge*, [1900] 2 Q. B. 695; 37 Digest 359, 1615; *R. v. Hopkins* (1900), 64 J. P. 582.
- (*f*) *A.-G. v. Merthyr Tydfil Union*, [1900] 1 Ch. 516; 37 Digest 359, 1616; but see *Lewisham Union v. Nice*, cited in next note.
- (*g*) *Poplar Union v. Martin*, [1905] 1 K. B. 728; 37 Digest 360, 1617; *Lewisham Union v. Nice*, [1924] 1 K. B. 618; 37 Digest 360, 1628.
- (*h*) *Hosegood v. Camps* (1889), 53 J. P. 612; 37 Digest 360, 1621.
- (*i*) *Reeve v. Eastwood* (1888), 53 J. P. 134, D. C.; 37 Digest 359, 1612.
- (*k*) *Flannagan v. Bishop Wearmouth Overseers* (1857), 8 E. & B. 451; 37 Digest 350, 1611.
- (*l*) *R. v. Flintan* (1830), 1 B. & Ad. 227; 37 Digest 358, 1608.
- (*m*) *Wilson v. Glossop* (1888), 20 Q. B. D. 354; 27 Digest 202, 1750.
- (*n*) *R. v. Yeomans* (1860), 1 L. T. 368; 27 Digest 66, 484.
- (*o*) Poor Law Amendment Act, 1844, s. 6; 2 Halsbury's Statutes 10.
- (*p*) Poor Law Act, 1930, s. 155; 12 Halsbury's Statutes 1043.
- (*q*) *Mile End Union v. Sims*, [1905] 2 K. B. 200; 37 Digest 360, 1624.

warrant any inmate charged with any offence and punishable on summary conviction, and has all the powers and authority of a constable (r). [763]

An inmate of an institution who neglects to observe any regulation in the Public Assistance Order, 1930 (s), or any regulation made in accordance with that order, or commits certain minor offences set out in Art. 55 of that order is to be deemed disorderly, and may be punished by the master subject to any regulation made by the council either by withholding from him, pending any further directions of the management committee, any privilege which he may have been allowed to enjoy, or altering his dietary in accordance with Art. 57.

An inmate who within seven days repeats any offence for which he would be deemed to be disorderly; insults or reviles any officer of the institution, or any member of the council; wilfully disobeys any lawful order of the master or matron; unlawfully strikes or otherwise assaults any person; wilfully or maliciously damages any property of the council; is drunk; acts or writes indecently or obscenely; or wilfully disturbs other persons at public worship is to be deemed to be refractory (t).

A refractory inmate may be punished by order of the management committee in accordance with Art. 58.

If any offence, whereby an inmate becomes refractory, is accompanied by violence, or if he acts indecently or obscenely, or mischievously breaks or damages the property of the council, or endeavours to incite other inmates to act with insubordination, the master may place the inmate in confinement for any time not exceeding twelve hours (u). Further provisions with regard to the punishment of such persons are contained in Arts. 60, 61, 62, 63, 64, 65 and 66 of the Public Assistance Order, 1930 (x). [764]

Miscellaneous Offences.—Regulations must be made by the management committee for the punishment of children guilty of misbehaviour in children's homes subject to the provisions contained in Arts. 87 and 88 (a).

If any person in receipt of relief absconds, escapes or leaves any workhouse during the period for which he may be detained therein, or refuses or neglects, whilst an inmate of the institution, to do work which the regulations prescribe, or wilfully destroys or injures his own clothes, or damages any property of the council, or, having been removed under a removal order within twelve months returns and becomes chargeable to the district from which he was removed (aa), he is deemed to be an idle and disorderly person within the meaning of sect. 3 of the Vagrancy Act, 1824 (b). If any such person commits any of these offences after having been previously convicted as an idle or disorderly person, he shall be deemed to be a rogue and vagabond within the meaning of sect. 4 of the Vagrancy Act, 1824 (c).

If any person knowingly takes in pawn, buys or exchanges any

(r) Poor Law Act, 1930, s. 159; 12 Halsbury's Statutes 1045.

(s) See 12 Halsbury's Statutes 1053—1090.

(t) Art. 56, *ibid.*, 1063.

(u) *Ibid.*, Art. 59.

(x) S.R. & O., 1930, No. 185.

(aa) See 12 Halsbury's Statutes 1068.

(bb) Poor Law Act, 1930, s. 101; 12 Halsbury's Statutes 1024.

(cc) 12 Halsbury's Statutes 913.

(cc) Poor Law Act, 1930, s. 151 (2); *ibid.*, 1042.

goods provided for the use of any workhouse, or given to any poor person or any goods or furniture of a workhouse or causes to be obliterated or defaced any mark stamped on any goods belonging to the council, he is liable to a fine of not exceeding £5 on summary conviction or, if the court consists of a single justice, not exceeding 20s. (d).

If any person deserts or runs away from a workhouse and carries away with him any such goods, he is liable on summary conviction to a term of imprisonment of not exceeding three months. [765]

Introduction of Intoxicating Liquors into Institutions.—If a person introduces or attempts to introduce into any workhouse any intoxicating liquors without the order in writing of the institution master, the latter, or any officer acting under his direction, may cause the person to be apprehended and brought before a justice. Such an offender is liable on summary conviction to a fine not exceeding £10. If the court consists of a single justice only, the fine shall not exceed 20s. If the master of a workhouse orders any intoxicating liquor to be introduced into the institution, except for the domestic use of himself or of any officer of the institution or their families, or except by and under the authority of the medical officer, or of a visiting justice, or of the county or county borough council, or in conformity with any rules, orders or regulations made by the Minister, he is liable on summary conviction to a fine not exceeding £20. [766]

Offences by Masters and Officers of Workhouses.—If any officer of a workhouse punishes with corporal punishment any adult person in a workhouse, or confines any such person for any offence or misbehaviour for more than twenty-four hours or such further time as may be necessary in order that he may be brought before a justice, or in any way abuses or ill-treats an inmate or is guilty of any misbehaviour or in any other way misconducts himself towards or in respect of any inmates of the workhouse, he is liable on summary conviction for every such offence to a fine not exceeding £20 (e). The information must be laid either by the council or an inmate. [767]

No officer concerned with the relief of the poor may receive any money for the burial of any poor person or receive any money from any dissecting school or school of anatomy or hospital, or derive any personal emolument whatever in respect of the burial or disposal of any such body. If any officer contravenes this provision he is liable on summary conviction to a fine not exceeding £5.

If any such officer steals or wilfully wastes or misapplies any money or goods belonging to the council he shall, in addition to any penalties to which he may be liable independently, be liable on summary conviction to a fine not exceeding £20, and also to pay treble the amount of the money or goods (f). [768]

If any such officer wilfully authorises or makes an illegal or fraudulent payment, or unlawfully makes any entry in his accounts for the purpose of defraying or making over to himself or any other person, the whole or any part of any sum of money unlawfully expended by him, or disallowed or surcharged by the district auditor, he is liable on summary conviction to a fine not exceeding £20, and also to pay treble the amount of the payment or of the sum so entered in his accounts (g).

(d) Poor Law Act, 1930, s. 149.

(e) *Ibid.*, s. 31; 12 Halsbury's Statutes 984.

(f) See *ibid.*, ss. 78 and 146.

(g) *Ibid.*, s. 147; 12 Halsbury's Statutes 1040.

If any such officer unlawfully procures the removal of a person from a county or county borough within which the officer acts, he is liable under the conditions prescribed by sect. 148 on summary conviction to a fine not exceeding £5 (h).

Proceedings under this section may be taken before a court of summary jurisdiction having jurisdiction within the county or county borough either from which or to which the person was conveyed or departed. (See also title SETTLEMENT AND REMOVAL.) [769]

Assaults on Officers.—Any person convicted of an assault upon an officer in the execution of his duty, or upon any person acting in aid of such officer, shall be liable on conviction on indictment to imprisonment for any term not exceeding two years (i). Summary proceedings may also apparently be instituted under sect. 12 of the Prevention of Crimes Act, 1871 (k). [770]

Refusing to perform Task of Work.—Where the council of any county or county borough prescribes a task of work to be performed by any person to whom, or to whose wife or child under the age of sixteen, outdoor relief is granted by the council and that person refuses or wilfully neglects to perform the task, or wilfully damages any of the tools or materials, or other property belonging to the council, he is deemed to be an idle or disorderly person within the meaning of sect. 3 of the Vagrancy Act, 1824 (l). Proceedings can be taken, however, only if the task is suited to the age, sex and physical capacity of that person, and is of the nature and description which has been previously approved by the Minister. It is customary for the Minister to give to each council general approval to tasks of work carried out by men in receipt of outdoor relief in accordance with Art. 6 of the Relief Regulation Order, 1930 (m). [771]

Refusal to allow Inspection of Documents.—Any member of a county or county borough council, or any officer who refuses to allow a district auditor to make any requisite inspection of books or accounts, or obstructs his inspection or conceals any such accounts or books for the purpose of preventing inspection, is liable on summary conviction to a fine not exceeding £5 (n).

If any member of the council of a county or county borough, or the clerk to such a council, neglects to preserve or publish any rules, orders or regulations, as directed by the Minister, or refuses to allow inspection thereof or to furnish or allow copies to be taken, he is liable on summary conviction to a fine not exceeding £10 (o). [772]

Refusal to give Evidence at Inquiry.—Any person who refuses or wilfully neglects to give evidence at an inquiry authorised by the Minister, or who wilfully alters, suppresses, conceals, destroys or refuses to produce, any books or documents, which he may be required to produce, is guilty of a misdemeanour (p). [773]

(h) 12 Halsbury's Statutes 1041.

(i) Poor Law Act, 1930, s. 154; 12 Halsbury's Statutes 1043. See also Offences against the Person Act, 1861, s. 38; 4 Halsbury's Statutes 611.

(k) 4 Halsbury's Statutes 676.

(l) 12 Halsbury's Statutes 913. Poor Law Act, 1930, s. 152; *ibid.*, 1043.

(m) 12 Halsbury's Statutes 1061.

(n) Poor Law Act, 1930, s. 120; 12 Halsbury's Statutes 1031. See also title AUDIT.

(o) *Ibid.*, s. 197 (3).

(p) *Ibid.*, s. 160 (4).

Disobedience to Rules and Orders.—If any person wilfully neglects or disobeys any rule, order or regulation made by the Minister under the Poor Law Act, he is liable on summary conviction for a first offence to a fine not exceeding £5 or, for a second offence, to a fine not exceeding £20, or less than £5. In the event of a person having been convicted twice, every subsequent offence is to be deemed a misdemeanour and he will be liable on conviction on indictment to imprisonment for a term not exceeding two years, and a fine of not less than £20 (*q*). If any officer of a county or county borough council concerned with the relief of the poor wilfully disobeys any legal or reasonable orders given for carrying into execution the rules, orders or regulations made by the Minister under the Act, or the provisions of the Act, he is liable on summary conviction to a fine not exceeding £5 (*r*). Orders of the Minister which might be subject to this section are the Relief Regulation Order, 1930, and the Relief Regulation (Amendment) Order, 1932 (*s*). [*774*]

Apprentices.—Special provisions are contained in the Poor Law Act, 1930, with regard to persons apprenticed by a public assistance authority. Every master wilfully refusing or neglecting to perform any of the terms or conditions inserted in any indenture is liable to a penalty of not exceeding £20 (*t*). Penalties are also imposed in the case of a master assigning or discharging apprentices without the written consent of two justices, and for removing out of the county or county borough without notice (*u*). [*775*]

(*q*) Poor Law Act, 1930, s. 139; 12 Halsbury's Statutes 1097.

(*r*) *Ibid.*, s. 145.

(*s*) 25 Halsbury's Statutes 461.

(*t*) Poor Law Act, 1930, s. 61 (2); 12 Halsbury's Statutes 999.

(*u*) *Ibid.*, ss. 60, 62.

POOR LAW OFFICERS

See POOR LAW MEDICAL OFFICERS; PUBLIC ASSISTANCE OFFICER; RELIEVING OFFICER; PUBLIC ASSISTANCE INSTITUTION MASTER.

POOR LAW SCHEME

See PUBLIC ASSISTANCE.

POOR RELIEF

See PUBLIC ASSISTANCE.

POPULATION

See CENSUS.

PORT HEALTH AUTHORITIES

	PAGE		PAGE
INTRODUCTORY - - - - -	203	RE-NAMING OF PORT SANITARY DISTRICTS AND AUTHORITIES - - - - -	301
CONSTITUTION OF PORT HEALTH DISTRICT - - - - -	203	EXPENSES - - - - -	301
JURISDICTION AND POWERS OF PORT HEALTH AUTHORITY - - - - -	205	BORROWING POWERS - - - - -	302
EPIDEMIC, ENDIMIC AND INFECTIOUS DISEASES - - - - -	295	PUBLIC WORKS LOAN COMMISSIONERS - - - - -	302
EXAMINATION OF FOOD - - - - -	299	PROTECTION OF MEMBERS AND OFFICERS - - - - -	302
DANGEROUS DRUGS - - - - -	299	TRANSFER AND COMPENSATION OF OFFICERS - - - - -	302
MEDICAL INSPECTION OF ALIENS - - - - -	299	MEDICAL OFFICERS AND SANITARY INSPECTORS - - - - -	302
CANAL BOATS - - - - -	301	DEFULCE POWERS - - - - -	303
SHIPS AND BOATS - - - - -	301	LONDON - - - - -	304
POSITION OF LOCAL AUTHORITY - - - - -	301		
DELEGATION OF FUNCTIONS - - - - -	301		

See also titles :

IMPORTED FOOD ;
JOINT BOARDS AND COMMITTEES ;

MEDICAL OFFICER OF HEALTH ;
RATS AND MICE.

Introductory.—Port health administration has developed from the old system of quarantine, which was originally introduced in a fruitless endeavour to prevent the importation of bubonic plague, and was later applied with still less success against cholera. Knowledge of the aetiology of the major infectious diseases has enabled more effective control to be exercised with less interference with sea-borne commerce and has resulted in international agreement on the sanitary measures which may be applied to shipping. Special statutory provisions have been made by the legislature to give effect to the International Sanitary Convention of Paris, 1926.

The responsibilities of health authorities of ports are not, however, now limited to preventing the importation of infectious sickness but include also the supervision of the hygiene of crew and passenger accommodation in ships, the inspection of imported food, rat repression both in ships and on shore, the control of shell-fish layings and the general sanitary administration of the port. [776]

Constitution of Port Health District.—By sect. 2 (2) of the P.H.A., 1936 (a), the Minister of Health is empowered by order to constitute a port health district consisting of the whole or any part of a port as established for the purpose of the enactments relating to the Customs (b),

(a) 29 Halsbury's Statutes 323.

(b) By the Customs Consolidation Act, 1876, s. 11; 16 Halsbury's Statutes 290, the Treasury may, by warrant, appoint any port in the United Kingdom and declare the limits thereof, and annul the limits of any port, and declare the same to be no longer a port, or alter or vary the names, bounds and limits thereof: provided always, that when by any such warrant the pre-existing limits of any port shall be altered or varied, the same shall not affect or abridge any lawful rights or privileges co-extensive with such pre-existing limits (irrespective of matters relating to Her

and either constitute one riparian authority (c) the port health authority for the district, or constitute a joint board, consisting of representatives of two or more riparian authorities, to be the port health authority for the district. The Minister may also constitute a port health district consisting of any two or more areas, being ports or parts of ports, and constitute a joint board, consisting of representatives of two or more riparian authorities, to be the port health authority for the district.

[777]

A joint board so constituted a port health authority are a body corporate by such name as may be determined by the order constituting the port health district. They have perpetual succession and a common seal and are empowered to hold land for the purpose of their constitution without licence in mortmain (d).

Where the Minister proposes to make an order constituting a port health district, he must give notice thereof to every riparian authority who will, under the order, be liable to contribute to the expenses of the port health authority, and if, within twenty-eight days after such notice has been given to any such riparian authority, they give notice to the Minister that they object to the proposal and the objection is not withdrawn, any order made by the Minister which will impose any such liability on that authority will be provisional only and will not have effect until confirmed by Parliament (e). [778]

An order constituting a port health district may contain such incidental, consequential and supplemental provisions as appear to the Minister to be necessary or proper for bringing the order into operation and giving full effect thereto. The provisions generally contained in such an order are the enactments in the L.G.A., 1933, dealing with members and meetings, committees, officers and offices, purchase and disposal of lands, mortgages, bylaws, contracts and legal proceedings (f).

Any such order, whether or not confirmed by Parliament, may be amended or revoked by a subsequent order made by the Minister, but if the Minister proposes to make an amending or revoking order, he must give notice to the port health authority and to every authority which is, or under the proposed order will be, a constituent authority, and if, within twenty-eight days after such notice has been given to any such authority, they give notice to the Minister that they object to the proposal and the objection is not withdrawn, any order made by the Minister will be provisional only and will not have effect until it is confirmed by Parliament (g). [779]

Majesty's Customs) granted to any person or body of persons by any Act of Parliament, grant, or other legal instrument, but they shall be deemed to be and remain the same for the purposes of such Act, grant or other legal instrument as if no such alteration or variation had been made: provided that any port so appointed by warrant shall, to the whole extent of the limits thereof, be deemed to be a port within the meaning of and for the purposes of the Harbours Act, 1814, and of any other Public Act for the protection of the ports, harbours, shores and navigable rivers of the United Kingdom or any part thereof.

(c) The expression riparian authority means, in relation to any customs port or any part of such port, any local authority whose district, or any part of whose district, forms part of, or abuts on, that port or part of a port; and any conservators, commissioners or other persons having authority in, over or within that port or part of a port.

(d) P.H.A., 1936, s. 2 (3); 29 Halsbury's Statutes 328.

(e) *Ibid.*, s. 2 (4).

(f) *Ibid.*, s. 9 (1).

(g) *Ibid.*, s. 9 (2).

In order to bring about a single, up-to-date code covering, so far as possible, the powers and duties of all port health authorities, sect. 314 of the P.H.A., 1936 (*h*), provides that where by a provisional or other order in operation immediately before October 1, 1937, any enactment repealed by the P.H.A., 1936, has been applied to a port health authority, that order may be amended by an order of the Minister applying to the authority, in substitution for any enactment so repealed, any corresponding enactment in the P.H.A., 1936, which the Minister could under that Act apply to an authority of the like kind. If, however, the Minister's order is not made within two years of October 1, 1937, and on the application of the port health authority in question, the order is provisional only and of no effect until confirmed by Parliament. [780]

All expenses of, and incidental to, the constitution of a port health district are payable by the port health authority, and, so far as those expenses are expenses incurred by the Minister, the amount thereof as certified by him is recoverable by him from the authority as a debt due to the Crown (*i*). [781]

Jurisdiction and Powers of Port Health Authority.—An order constituting a port health district confers on the port health authority jurisdiction over all waters within the area to which the order relates, and also over the whole of the district of any such riparian authority as may be specified in the order, or such part of any such district as may be so specified. The order may also assign to the port health authority any of the functions, rights and liabilities of a local authority under any enactment contained in the P.H.A., 1936, or any unrepealed enactment contained in the P.H.A.s, 1875 to 1932 (*k*). [782]

A port health authority are not a local authority within the meaning of the L.G.A., 1933, or the P.H.A., 1936, although in pursuance of sect. 3 (2) of the latter Act (*l*) provisions of the former Act, with the following exceptions, may be applied to them. The provisions of the Act enabling land to be acquired compulsorily, otherwise than by means of a provisional order, cannot be so applied, nor can the provisions of the Act relating to the audit of accounts by district auditors be applied to a port health authority being a joint board, unless all the accounts of one or more of the councils are subject to audit by district auditors, or the accounts of the joint board would, if they had been accounts of the several councils, have been subject to audit. Further, where the port health authority are the council of a borough such last-mentioned provisions cannot be so applied, unless all the accounts of the council are subject to such audit. [783]

Epidemic, Endemic and Infectious Diseases.—One of the most important functions which may be assigned to a port health authority is the enforcement and execution of the regulations made by the Minister under sect. 148 of the P.H.A., 1936 (*m*). Under this section the Minister is authorised to make regulations : (a) with a view to the treatment of persons affected with any epidemic, endemic or infectious disease and for preventing the spread of such disease ; (b) for preventing danger to public health from vessels or aircraft arriving at any place ;

(*h*) 29 Halsbury's Statutes 521.

(*k*) *Ibid.*, s. 3 (1).

(*m*) *Ibid.*, 427.

(*i*) P.H.A., 1936, s. 6 (5).

(*l*) 29 Halsbury's Statutes 824.

and (c) for preventing the spread of infection by means of any vessel or aircraft leaving any place, so far as may be necessary or expedient for the purpose of carrying out any treaty, convention, arrangement or engagement with any other country. The Minister may by any such regulations apply, with or without modifications, to any disease to which the regulations relate, any enactment (including any enactment in the P.H.A., 1936) relating to the notification of disease or to notifiable diseases. Before making regulations under (b) or (c), the Minister is required to consult, in the case of vessels, the Board of Trade and, in the case of aircraft, the Secretary of State for Air. The regulations which may be made under sect. 148 may provide for (a) the signals to be displayed by vessels or aircraft having on board any case of epidemic, endemic or infectious disease; (b) the questions to be answered by masters, pilots and other persons on board any vessel or aircraft as to cases of such disease on board during the voyage or on arrival; (c) the detention of vessels or aircraft and of persons on board them; (d) the duties to be performed in cases of such diseases by masters, pilots and other persons on board vessels or aircraft; and may authorise the making of charges and provide for the recovery of such charges and of any expenses incurred in disinfection. [784]

The regulations may also provide for their enforcement and execution by officers of customs and excise and officers and men employed in the coastguard. So far as they apply to officers of customs and excise, they require the consent of the Commissioners of Customs and Excise; so far as they apply to officers or men employed in the coastguard, the consent of the Admiralty and the Board of Trade; and so far as they apply to signals, in the case of vessels, the consent of the Board of Trade, and, in the case of aircraft, the consent of the Secretary of State for Air.

Authorised officers of the port health authority, officers of customs and excise and officers and men employed in the coastguard have power to enter any premises, vessel, or aircraft for the purpose of executing, or superintending the execution of, any of the regulations. [785]

The Minister has not as yet made any regulations under sect. 143 of the P.H.A., 1936, but on February 4, 1933, in exercise of his then existing powers, he made the Port Sanitary Regulations, 1933 (n), which continue to have effect as if made under the corresponding powers in the Act of 1936. These regulations, which include provisions for giving effect to the International Sanitary Convention of 1926, are designed to consolidate in one code the whole of the regulations relating to the control of conditions liable to lead to the spread of infectious disease from or to ships in ports in England and Wales. They revoke the regulations issued in 1907, relating to cholera, yellow fever and plague in ships from foreign ports, coastwise ships and outward bound ships, and also the Port Sanitary Authorities (Infectious Diseases) Regulations, 1920, and the P.H. (Deratification of Ships) Regulations, 1929. [786]

The definitions of the terms infected ship and suspected ship in relation to cholera, plague and yellow fever respectively, are amended in accordance with the International Sanitary Convention of 1926, and the sanitary measures prescribed in regard to such ships, and also to any in which typhus fever or smallpox has occurred, are precisely as laid down in such convention.

(n) S.R. & O., 1933, No. 38.

The regulations contained a number of new and important provisions. In the first place, the master of a foreign-going ship approaching a port in England or Wales is now required to ascertain the state of health of all persons on board and to fill in and sign a declaration of health in the prescribed form. Thus the master cannot plead as an excuse for failure to notify sickness that he was not aware of any case of illness aboard his ship. It is his duty to ascertain whether all are in good health and, if not, to notify the port health authority, unless he is satisfied that no question of infection or the spread of infectious disease is involved. The declaration of health sets out the symptoms which should lead a master to suspect that a case of illness is one of the notifiable infectious diseases. The definition of a foreign-going ship does not include ships trading between ports in Great Britain and ports on the continent of Europe between the River Elbe and Brest; the masters of such ships are, therefore, exempted from the above requirements. [787]

The regulations empower the Minister, in relation to ports where there are arrangements for the reception by the port health authority of wireless messages, to publish in the *London Gazette* a notice that ships which are equipped with wireless transmitting apparatus and which require the attention of a port M.O.H. must send to the port health authority, not more than twelve and not less than four hours before the expected time of arrival of the ship, a wireless message giving the necessary information.

New instructions were contained in the regulations in regard to the flags and signal lights to be shown by ships coming from foreign ports as indications of the health conditions on board. The port health authority are required to establish, with the concurrence of the customs officer and the harbour master, one or more mooring stations within the docks where ships can, if necessary, be isolated. Similarly, a mooring station outside the docks must be established, if local conditions permit. Infected or suspected ships must be taken to a mooring station, unless the M.O.H. otherwise directs. [788]

The M.O.H. must prepare and keep up to date a list of ports which are infected, or suspected to be infected, with plague (human or rodent), cholera, yellow fever, typhus or smallpox, and must supply pilots and customs officers with such list and any amendments thereto.

As formerly, pratique, i.e. permission for a ship to have free communication with the shore, can only be granted by an officer of H.M. Customs. A customs officer on board a ship must, therefore, peruse the declaration of health and may make any further inquiries. If, in consequence, he is of opinion that the health conditions of the ship require investigation by the port M.O.H., or if the ship has sailed from or called at any port on the list of infected ports or is for any other reason subject to the special instructions of the M.O.H., the customs officer must detain such ship until it has been medically inspected, and such inspection must be carried out within twelve hours. If the port M.O.H. boards a ship before the customs officer, he may take such steps as are indicated by the health conditions on board, and notify the customs officer when there are no medical reasons for withholding pratique. No person other than the pilot, customs officer, immigration officer or officer of the port health authority may board or leave a ship without the permission of the M.O.H. until it is free from control under these regulations. The M.O.H. may make the granting of such permission conditional upon the person concerned giving his name, intended

destination and address and any other information reasonably required for the purpose of these regulations.

If plague (human or rodent), cholera, yellow fever, typhus or smallpox occurs on board a ship after it has arrived in the port, the M.O.H. may, if he thinks fit, order the removal of the ship to a mooring station. [789]

The M.O.H. is empowered to board any ship, examine any person who is suffering from, or may have been exposed to, infectious disease, or who is believed to be verminous, and may order such isolation of persons on board or ashore and such measures of disinfection as he deems necessary. The master of a ship is required to notify the occurrence of infectious disease on board, to answer all health questions and to render such assistance as may be reasonably required.

The M.O.H. may examine any person proposing to embark on a ship whom he suspects to be suffering from plague, cholera, yellow fever, typhus or smallpox, and prohibit his embarkation, if necessary. He may also prohibit the embarkation of persons who are contacts with the severe type of smallpox or who have come from a district where this disease exists. If the Minister has declared a district in England or Wales to be infected with plague, cholera, yellow fever, typhus or smallpox, the M.O.H. of the port concerned has certain other obligations for the protection of ships within such port.

Where, under these regulations, the master of a ship is required to carry out measures for the prevention of the spread of infection the port health authority may, at the request of the master, and, if they think fit, at his cost, carry out such measures on his behalf, but if any charges are so made they must not exceed the cost incurred by the authority, and must not in any case exceed twenty pounds unless notice of the charge has been given to the master before the commencement of the work.

The officers of the port health authority must enforce and execute the regulations in so far as they are directed so to do by the port health authority. [790]

Other regulations regarding infectious diseases which it is the duty of port health authorities to carry out are those contained in the Port Sanitary Authorities (Assignment of Powers) Order, 1912 (o), as extended by the Port Sanitary Regulations, 1938, which relate to the cleansing and disinfection of ships; the Public Health (Notification of Puerperal Fever and Puerperal Pyrexia) Regulations, 1926 (p); the Parrots (Prohibition of Import) Regulations, 1930 (q), which were made with a view to preventing the spread of the infectious disease known as psittacosis; and the Public Health (Shell-fish) Regulations, 1934 (r), which prohibit the sale of shell-fish likely to cause danger to public health. In regard to certain port health districts, local regulations have been made which it is the duty of the appropriate port health authority to enforce.

A port health authority are also the authority within their district to execute and enforce the Rats and Mice (Destruction) Act, 1919 (s), which is made applicable to a vessel as if the vessel was land and the master of the vessel the occupier thereof. [791]

(o) S.R. & O., 1912, No. 1200.

(q) S.R. & O., 1930, No. 299.

(s) 18 Halsbury's Statutes 963.

(p) S.R. & O., 1926, No. 972.

(r) S.R. & O., 1934, No. 1342.

Examination of Food.—A port health authority are, within their district, charged with the enforcement and execution of the regulations made by the Minister with respect to the examination of imported food. The regulations at present in force are the Public Health (Meat) Regulations, 1924 (*t*) ; the Public Health (Imported Food) Regulations, 1937 (*u*) ; the Public Health (Preservatives, etc., in Food) Regulations, 1925 (*v*) , as amended by the Public Health (Preservatives, etc., in Food) Regulations, 1926 (*w*) , and the Public Health (Preservatives, etc., in Food) Regulations, 1927 (*a*) ; and the Public Health (Imported Milk) Regulations, 1926 (*b*). [792]

Dangerous Drugs.—It is provided by the Dangerous Drugs (No. 3) Regulations, 1923 (*d*), that if a foreign ship in any port in Great Britain requires to obtain a supply of any of the drugs to which the Dangerous Drugs Regulations, 1921 (*e*), apply, in order to complete the necessary equipment of the ship, the master of the ship is authorised to purchase and be in possession of such quantity of any of the drugs as may be certified by the M.O.H. of the port where the ship is (or in his absence by the assistant M.O.H. of the port) to be necessary for the purpose, the quantity not to exceed what is required for the use of the ship until it next reaches its home port. The certificate given by the M.O.H. or assistant M.O.H. of the port shall be marked by the supplier with the date of the supply and shall be retained by him and kept available for inspection. [793]

Medical Inspection of Aliens.—The medical officers appointed by port health authorities, in certain cases, carry out medical inspections of aliens under the Aliens Order, 1920. Subject to compliance with the regulations of the Minister, dated July 14, 1920, the whole of the approved expenditure of the health authorities of the ports from time to time approved under the Second Schedule to the Aliens Order of 1920 in respect of the medical inspection of aliens under that order are reimbursed by the M. of H. out of moneys provided by Parliament. [794]

Canal Boats.—A local authority or a port health authority whose district includes, or abuts on, a canal (*f*) or some part of a canal, are for the purpose of the registration of canal boats under Part X. of the P.H.A., 1936 (*g*), a registration authority for such canal.

(*t*) S.R. & O., 1924, No. 1482.

(*u*) S.R. & O., 1937, No. 329.

(*v*) S.R. & O., 1925, No. 775.

(*w*) S.R. & O., 1926, No. 1557.

(*a*) S.R. & O., 1927, No. 577.

(*b*) S.R. & O., 1926, No. 820.

(*d*) S.R. & O., 1923, No. 1095.

(*e*) S.R. & O., 1921, No. 865.

(*f*) The expression canal includes any river, inland navigation or lake and any other waters situate wholly or in part within a county or county borough, whether those waters are or are not within the ebb and flow of tide.

(*g*) 29 Halsbury's Statutes 482-486. The expression canal boat means any vessel, however propelled, which is used for the conveyance of goods along a canal not being (a) a sailing barge which belongs to the class generally known as Thames sailing barge and is registered under the Merchant Shipping Acts, 1894 to 1928, either in the port of London or elsewhere ; or (b) a sea-going ship so registered ; or (c) a vessel used for pleasure purposes only (*ibid.*, s. 258).

A local authority are not, as such, however, a registration authority for a canal if they are, or are represented on, a port health authority who are a registration authority for that canal.

As a registration authority it is the duty of a port health authority to carry into effect the provisions of Part X. of the P.H.A., 1936, and the regulations made thereunder which relate to canal boats (h). [795]

If a canal boat conforms to the conditions of registration prescribed by the regulations, any registration authority for the canal on which the boat is accustomed or intended to ply are required, upon payment of the prescribed fee, to register the boat. Upon registering a canal boat, the registration authority must give to the owner of the boat a certificate of registration in duplicate identifying the owner and the boat and stating the place to which the boat is registered as belonging, the number, age and sex of the persons permitted to dwell in the boat, and such other particulars as may be required by the regulations, or as the authority think desirable.

A certificate of registration of a canal boat ceases to be in force if any structural alterations which affect the conditions upon which the certificate was obtained are made in the boat.

A person aggrieved by the refusal of a registration authority to register a canal boat may appeal to a court of summary jurisdiction. [796]

A port health authority, on being informed that any person on a canal boat within their district is suffering from an infectious disease, are required to cause such steps to be taken for preventing the spread of the disease as they consider to be necessary, and for that purpose may exercise any of the powers in relation to the prevention of infection conferred on them by the P.H.A., 1936, or, as the case may be, Part IX. of the P.H. (London) Act, 1936 (i), including powers for procuring the removal to hospital of persons suffering from infectious disease, and may also, if need be, detain the boat, but not for any longer period than is necessary for cleansing and disinfecting it.

In this matter the local authority have concurrent powers with the port health authority. The latter authority as has already been indicated, will not have the powers unless such powers have been assigned to them by the order constituting them. [797]

If an authorised officer of a port health authority has reasonable ground for believing that any provision of Part X. of the P.H.A., 1936, or any regulation made thereunder is being contravened as respects a canal boat, or that there is on board a canal boat any person suffering from an infectious disease, he may, for the purpose of ascertaining whether there is any such contravention or any person on board suffering from an infectious disease, on producing, if required, evidence of his authority, enter a canal boat at any time between six o'clock in the morning and nine o'clock in the evening and examine every part of the boat and may, if need be, detain the boat for the purpose of his examination, but not for any longer period than is necessary. [798]

(h) The principal existing regulations are the Canal Boats Regulations, made by the Local Government Board on March 20, 1878, the Canal Boats (Sale of, Regulations) Order, made by the Local Government Board on July 26, 1887, the Canal Boats Order, 1922 (S.R. & O., 1922, No. 451), the Canal Boats (Amendment) Regulations, 1925 (S.R. & O., 1925, No. 843), and the Canal Boats (Amendment) Regulations, 1931 (S.R. & O., 1931, No. 444).

(i) 26 Geo. 5 & 1 Edw. 8, c. 50.

Ships and Boats.—A port health authority, if the relevant provisions have been applied to it by order, have jurisdiction over any vessel lying in any inland or coastal waters within their district as if such vessel were a house, building or premises within their district, and the master, or other person or officer in charge of the vessel were the occupier. The provisions in question are those for the execution of which local authorities are responsible contained in the following enactments in the P.H.A., 1936 (*k*), namely, so far as regards boats used for human habitation, the provisions of Part II. relating to filthy or verminous premises or articles and verminous persons; Part III. (which relates to nuisances and offensive trades) provided that the provisions of this Part with regard to smoke nuisances are not to apply in relation to any vessel habitually used as a sea-going vessel, except that a funnel of, or chimney on, any such ship sending forth black smoke in such quantity as to be a nuisance is to be a statutory nuisance; Part V. (which relates to the prevention, notification and treatment of disease); Part VI. (which relates to hospitals, laboratories, ambulances, mortuaries, etc.); and Part XII. (which consists of general provisions). A port health authority have, however, no such jurisdiction over any vessel belonging to His Majesty or under the command or charge of an officer holding His Majesty's commission, or to any vessel belonging to a foreign government. [799]

Position of Local Authority.—Where a port health district has been constituted under a port health authority, a local authority having jurisdiction in any part of such port health district, including the port health district of the Port of London, can no longer discharge in relation thereto any functions which are functions of the port health authority. [800]

Delegation of Functions.—With the approval of the Minister, a port health authority may by agreement delegate, with or without restrictions or conditions, any of their functions to a riparian authority whose district lies within, extends into or abuts on, the district of the port health authority. In discharging such delegated functions the riparian authority act as agents of the port health authority. [801]

Re-naming of Port Sanitary Districts and Authorities.—Sect. 5 of the P.H.A., 1936 (*l*), provides that port sanitary districts and port sanitary authorities constituted under any Act passed before that Act, including the port sanitary district and port sanitary authority of the Port of London, shall be known as and styled port health districts and port health authorities, and references in any Act or other document to port sanitary districts and port sanitary authorities shall be construed accordingly. [802]

Expenses.—Where one riparian authority have been constituted the port health authority for a port health district, their expenses as a port health authority are payable in the same manner as the expenses incurred by them in their capacity of local authority.

Where, however, the port health authority are a joint board consisting of two or more riparian authorities, their expenses, unless otherwise determined by the order constituting them, are defrayed out of a common fund contributed by the constituent districts in proportion

(*k*) 29 Halsbury's Statutes 309 *et seq.*

(*l*) *Ibid.*, 325.

to the rateable value of the property in each district, as ascertained according to the valuation lists for the time being in force. [803]

For the purpose of obtaining payment from constituent districts of the sums to be contributed by them, a joint board are empowered to issue precepts to the local authority of each district concerned, stating the sum to be contributed by the authority and requiring the authority, within a time limited by the precept, to pay the sums mentioned therein to the joint board, or to such person as the joint board may direct.

Any sum mentioned in a precept by a port health authority to a local authority is a debt due from the local authority and may be recovered accordingly, without prejudice, however, to the right of the port health authority to exercise any powers conferred on them by sect. 13 of the R. & V.A., 1925 (*m*). [804]

Borrowing Powers.—A port health authority constituted under Part I. of the P.H.A., 1936, have, subject to the provisions of the order by which they were constituted, the like powers of borrowing for the purposes of their functions under the order as a local authority have of borrowing for the purposes of their functions under the P.H.A., 1936. The borrowing powers of a local authority in respect of their functions under such last-mentioned Act are those contained in Part IX. of the L.G.A., 1938, and sect. 310 of the P.H.A., 1936 (*n*). [805]

Public Works Loan Commissioners.—The power of the Public Works Loan Commissioners to lend money to a county council or local authority for any works authorised by the P.H.A., 1936, which are works for which that council or authority may borrow money, extends to the lending of money to a port health authority constituted by an order under the P.H.A., 1936, or any enactment repealed by that Act, for any works authorised by the P.H.A., 1936, and the order, which are works for which that authority may borrow money. [806]

Protection of Members and Officers.—Sect. 265 of the P.H.A., 1875 (*o*) (which relates to the protection of members and officers of certain authorities), applies to port health authorities under the P.H.A., 1936, as if any reference in that section to the Act of 1875 were a reference to the Act of 1936. [807]

Transfer and Compensation of Officers.—The provisions of sect. 150 of, and the Fourth Schedule to, the L.G.A., 1938 (*p*) (which relate to the transfer and compensation of officers of a local authority), are applied to the officers of a port health authority, to which are also applied the provisions in sect. 326 of the P.H.A., 1936 (*q*), regarding the protection of the superannuation rights of transferred officers. [808]

Medical Officers and Sanitary Inspectors.—The provisions of sects. 108 to 110 of the L.G.A., 1938, as adapted and set out in the First Schedule to the P.H.A., 1936 (*r*), apply to medical officers of health and sanitary inspectors of port health districts. Under the above-

(*m*) 14 Halsbury's Statutes 637.

(*n*) 26 Halsbury's Statutes 412, and 29 Halsbury's Statutes 519.

(*o*) 18 Halsbury's Statutes 734.

(*p*) 26 Halsbury's Statutes 388, 504.

(*q*) 29 Halsbury's Statutes 527.

(*r*) *Ibid.*, 543.

mentioned provisions of the Act of 1933 the Minister has made the Sanitary Officers (Outside London) Regulations, 1935 (s). [809]

Default Powers.—If a complaint is made to the Minister that a port health authority have failed to discharge their functions under the P.H.A., 1936, in any case where they ought to have done so, or if the Minister is of the opinion that an investigation should be made as to whether a port health authority have failed to discharge such functions, he may cause a local inquiry to be held into the matter.

If, after a local inquiry has been held, the Minister is satisfied that there has been such a failure, he may make an order declaring the port health authority to be in default and directing them for the purpose of removing the default to discharge such of their functions, and in such manner and within such time or times, as may be specified in the order. [810]

If the authority fail to comply with any requirement of the Minister's order within the time limited thereby for compliance with that requirement, the Minister, in lieu of enforcing the order by *mandamus* or otherwise, may make an order transferring such of their functions as may be specified in the order to the council of the county, if their district (so far as it does not consist of water) lies wholly within one county or to himself in any other case.

Where any functions of a port health authority are so transferred to a county council, the expenses incurred by the county council in discharging those functions are, except in so far as they may be met by any grant made by the county council, a debt due from the authority to the council and are to be defrayed as part of the expenses of the authority, and the authority have the like power of raising the money required by the county council as they have of raising money for defraying expenses incurred directly by them. [811]

The county council, for the purpose of the functions transferred to them, may on behalf of the port health authority borrow money subject to the like conditions, in the like manner, and on the security of the like revenues as the port health authority might have borrowed for the purpose of those functions.

The county council may charge such revenues with the payment of the principal and interest of the loan, and the loan with the interest thereon is payable by the port health authority in like manner, and the charge will have the like effect, as if the loan were lawfully raised and charged on those revenues by the port health authority.

The county council are required to keep separate accounts of all receipts and expenditure in respect of the transferred functions. [812]

Where, however, the Minister has by order transferred to himself the functions of a port health authority, any expenses incurred by him in discharging such functions are payable in the first instance out of moneys provided by Parliament, but the amount of those expenses as certified by the Minister are on demand to be paid to him by the port health authority and are recoverable by him from them as a debt due to the Crown. The port health authority have the like power of raising the money required as they have of raising money for defraying expenses incurred directly by them.

The payment of any such expenses is to such extent as may be

sanctioned by the Minister a purpose for which a port health authority may borrow money in accordance with the statutory provisions relating to borrowing by such an authority.

In any case where the functions of a port health authority have been transferred by order to a county council or to the Minister, the Minister may at any time by a subsequent order vary or revoke that order, but without prejudice to the validity of anything previously done thereunder. When any order is so revoked, the Minister may, either by the revoking order or by a subsequent order, make such provision as appears to him to be desirable with respect to the transfer, vesting and discharge of any property or liabilities acquired or incurred by the county council or by him in discharging any of the functions to which the order so revoked related. [813]

London.—Under the P.H. (London) Act, 1936, sect. 5 (a), the City corporation are the port health authority for the Port of London (b), and references in any enactment passed before the commencement of the Act to the port sanitary authority have to be construed as reference to the port health authority. Under sect. 287 (5) their expenses are to be defrayed out of their corporate fund or general rate.

The Minister of Health may, under sect. 6, assign to the port health authority, with certain exceptions, the powers of a sanitary authority under the Act or the functions of a local authority under the P.H.A., 1875. The port health authority may by sect. 6 (2) of the P.H. (London) Act, 1936, with the sanction of the Minister of Health, delegate their powers to any riparian authority as defined in sect. 6 (4) of that Act. [814]

The port health authority are empowered by sect. 273 to acquire and hold land without licence in mortmain for the purpose of discharging their functions under the Act. Under sect. 147 (7) the port health authority are empowered to enforce the provisions of the section as to smoke consumption.

Although the district of the Port of London Health Authority extends through the districts of many other sanitary authorities, a joint board is not constituted for the Port of London, the health services of which are administered entirely by the corporation of the City of London.

In the Port of London the examination of food is not limited to the examination of imported food, since the authority have been assigned powers under sect. 47 of the P.H. (London) Act, 1891, now sect. 180 of the P.H. (London) Act, 1936. [815]

See also sect. 278 (2) which provides that no bye-laws made under the Act otherwise than by the port health authority except those made under the provisions specified in Part VIII. of the First Schedule to the Act shall extend to the port except so far as extended to the port by the Minister of Health. [816]

(a) 26 Geo. 5 & 1 Edw. 8, c. 50.

(b) The expression "Port of London" means the port of London as established for the purposes of the law relating to the customs of the United Kingdom.

PORt HEALTH AUTHORITIES OF THE BRITISH ISLES, ASSOCIATION OF

The Association of Port Health Authorities of the British Isles was founded in 1898, and consists of the port health authorities of the great majority of both the large and the smaller ports. All port health and riparian authorities are eligible for membership. Its objects are : (i.) to promote and encourage the improvement of the laws relating to port health and riparian matters, including the making of representations to the M. of H., the Board of Trade and other Government departments ; (ii.) to bring about a high and uniform standard of administration in port health and riparian matters ; (iii.) to watch over and protect the interests of port health and riparian authorities ; (iv.) to obtain and disseminate information on matters of importance to such authorities ; and (v.) in other respects to take such action as may be considered desirable in relation to subjects in which such authorities may be interested.

Representation of the constituent authorities is obtained by each of them appointing not exceeding three of its members and officers to attend meetings. Each representative is entitled to vote and the number of representatives varies according to the amount of the subscription paid by the constituent authority. [817]

The officers of the association fall into two groups, namely, those who usually hold office for a year or two, and those who may be regarded as permanent officers. In the former group there are the president, past president and vice-president, who are members and often chairmen or past chairmen of port health authorities. In the latter group are the legal adviser, secretary (*a*), recorder, treasurer and auditor. The secretary, recorder and treasurer are usually different port medical officers. The auditor is ordinarily a distinguished member of a port health authority.

The association meetings are held in London, except that in the early summer of each year an official visit is paid to one of the ports when the necessary time is given to inspecting all that may be seen there and the local methods of administration are demonstrated and examined.

The association has standing general and medical committees and appoints *ad hoc* sub-committees as may be necessary to consider and make recommendations in regard to special problems. There is a large contribution, both at meetings of the association and its committees, of technical papers dealing with various detailed aspects of the work in which port health authorities are interested. [818]

(*a*) The addresses of the legal adviser and secretary respectively are Sessions House, Maidstone, Kent, and City Hall, Cardiff.

The association has an important parliamentary side to its activities and usually represents the ports of the constituent countries in negotiations with those Government departments who are concerned with new legislation, regulations, orders and proposals for major changes in administrative ideas.

Persons with special knowledge or interests on any subject in common with the association are often invited to attend its meetings. The M. of H., Admiralty and Mercantile Marine are frequently represented by their medical and other officers at the meetings and conferences.

The expenditure of the association is raised by means of the subscriptions paid by the constituent authorities. Such funds are appropriated solely in defraying expenses in connection with the association or otherwise in promoting its objects. [819]

PORT OF LONDON AUTHORITY

	PAGE		PAGE
INTRODUCTION - - - - -	306	GENERAL POWERS AND PROVISIONS RELATING TO THE RIVER THAMES - - - - -	310
CONSTITUTION - - - - -	307	PROVISIONS RELATING TO PARTICULAR PARTS OF THE DOCKS AND WORKS - - - - -	311
THE PORT OF LONDON - - - - -	308		
GENERAL POWERS AND DUTIES - - - - -	309		
CHARGING POWERS - - - - -	309		
GENERAL FINANCIAL PROVISIONS - - - - -	309		
PROVISIONS RELATING TO THE DOCKS AND WORKS - - - - -	309		

Introduction.—The Port of London Act, 1908, established an authority which was to be a body corporate by the name of the Port of London Authority for the purpose of administering, preserving and improving the Port of London and otherwise for the purposes of that Act (a). As from March 31, 1909, the appointed day laid down in that Act (b), the undertakings of the London and India Docks Company, the Surrey Commercial Dock Company and the Millwall Dock Company (c), all the rights, powers, duties, property and liabilities of the Conservators of the River Thames in respect of the River Thames below the landward limit of the Port of London (d), and also all the powers and duties of the Master Wardens and Commonalty and Watermen and Lightermen of the River Thames and of the Court of Master Wardens and Assistants of the Watermen's Company with respect to the registration and licensing of craft and boats, the licensing of lightermen and watermen and the government, regulation and control of lightermen

(a) Port of London Act, 1908, s. 1 (8 Edw. 7, c. 68).

(b) *Ibid.*, s. 49.

(c) *Ibid.*, s. 3.

(d) *Ibid.*, s. 7.

and watermen (as well as the appointment of plying places and inspectors) (e), were transferred to and vested in the port authority. All the Acts relating to the three former dock companies and all the Acts relating to the port authority that were passed after the Port of London Act, 1908 (including the Port of London Act, 1908), with certain exceptions, were repealed by the Port of London (Consolidation) Act, 1920 (f), which is the principal Act containing the rights, duties and powers of the port authority (g). [820]

Constitution (h).—The members of the port authority are partly appointed and partly elected. Ten members are appointed by the following bodies :—

By the Admiralty	- - - - -	1
By the M. of T.	- - - - -	2
By the L.C.C. (being members of the council)	- - - - -	2
By the L.C.C. (not being members of the council)	- - - - -	2
By the corporation of the City of London (being a member of the corporation)	- - - - -	1
By the corporation of the City of London (not being a member of the corporation)	- - - - -	1
By the Trinity House	- - - - -	1 (i)

There are eighteen elected members, of whom seventeen are elected by payers of rates (as defined in Part IV. of the Second Schedule to the Port of London (Consolidation) Act, 1920), wharfingers and owners of river craft, and one is elected by wharfingers (k). The elections of elected members are held at such times and in such manner and in accordance with such regulations as the Minister of Transport may by order direct (l).

The chairman and the vice-chairman are appointed by the port authority and need not be either elected or appointed members (m). [821]

One of the members so appointed by the M. of T. and one so appointed by the L.C.C. are appointed by the Ministry and the council respectively after consultation with such organisations representative of labour as the Ministry and the council think best qualified to advise them upon the matter (n).

A member of the port authority is exempt from serving on a jury (o).

(e) Port of London Act, 1908, s. 11.

(f) Port of London (Consolidation) Act, 1920, s. 3 and Sched. III.; 18 Halsbury's Statutes 595, 751.

(g) The Port of London (Consolidation) Act, 1920, has been amended by the following Acts which have been passed since that date: The Port of London and Midland Railway Act, 1922; The Port of London (Finance) Act, 1923; The Port of London (Dock Charges) Act, 1923; The Port of London Act, 1925; The Port of London Act, 1926; The Port of London Act, 1928; The Port of London (Various Powers) Act, 1932; and The Port of London Act, 1935.

(h) Port of London (Consolidation) Act, 1920, Part II.; 18 Halsbury's Statutes 596.

(i) *Ibid.*, s. 6 (5); *ibid.*, 597.

(k) *Ibid.*, s. 6 (4).

(l) *Ibid.*, Sched. II., Part IV. (1). The regulations in force at present are the S.R. & O., 1930, Nos. 331 and 332.

(m) *Ibid.*, s. 6 (3). For the provisions as to qualifications of chairman, vice-chairman and other members, see Port of London (Consolidation) Act, 1920, Sched. II., Part II.

(n) Port of London (Consolidation) Act, 1920, s. 6 (6).

(o) *Ibid.*, s. 444.

The term of office of the chairman, vice-chairman and a member of the port authority is three years, and all elected and appointed members go out of office on April 1 in every third year after April 1, 1922, when their places are filled by new elections and new appointments (*p*).

The port authority must make to the M. of T. an annual report of their proceedings (*q*). [§22]

The Port of London.—The limits of the Port of London commence at an imaginary straight line (referred to as the "landward limit of the Port of London") drawn from high-water mark on the bank of the River Thames at the boundary line between the parishes of Teddington and Twickenham in Middlesex to high-water mark on the Surrey Bank of the River immediately opposite the first-mentioned point and extend down both sides of the river to an imaginary straight line (referred to as the "seaward limit of the Port of London") drawn from the pilot mark at the entrance to Havengore Creek in Essex on a bearing one hundred and sixty-six degrees from the true North Point of the compass to high-water mark on the Kent bank of the river, and include all islands, rivers, streams, creeks, waters, watercourses, channels, harbours, docks and places within these limits and all places which, under any Act of Parliament, are deemed to be within the Port of London, but do not include any part of the River Medway above the seaward limit of the jurisdiction of the Conservators of the River Medway or any part of the River Swale or any part of the River Lee or Bow Creek, within the jurisdiction of the Lee Conservancy Board or any part of the Grand Junction Canal (*r*). The seaward limit of the jurisdiction of the River Medway is an imaginary line drawn across that river from Garrison Point, Sheerness, to Dolly Bank in the Isle of Grain (*s*). The jurisdiction of the Lee Conservancy Board extends to certain stones or boundary marks placed on each side of Bow Creek in the counties of Essex and Middlesex called the "South Boundary Stones," which are placed 200 feet below the centre of the Barking Road Iron Bridge (*t*). [§23]

The corporation of the City of London continues to be the Port of London Sanitary Authority and the area of their jurisdiction is the Port of London as established for the purposes of the laws relating to the Customs of the United Kingdom (*u*), i.e. from the high-water mark at Teddington Lock to an imaginary line drawn from the Pilot Mark at the entrance to Havengore Creek, thence to the Lands End (Warden Point), Sheppey and up the Medway to the town of Rochester (*a*). [§24]

The Metropolitan Police Force have the powers and privileges of constables on the River Thames within or adjoining the counties of Middlesex, Surrey, Berkshire, Essex and Kent, and the City of London and the liberties thereof (*b*), as fully as in any part of the Metropolitan Police District which extends from Staines to Erith in Kent (*c*). [§25]

(*p*) Port of London (Consolidation) Act, 1920, Sched. II., Part III.

(*q*) *Ibid.*, s. 441.

(*r*) *Ibid.*, s. 2; as amended by the Port of London (Various Powers) Act, 1932, s. 22; 25 Halsbury's Statutes 791.

(*s*) Medway Conservancy Act, 1881, s. 4.

(*t*) Lee Conservancy Act, 1868, s. 3.

(*u*) P.H. (London) Act, 1891, s. 111; 11 Halsbury's Statutes 1086.

(*a*) Appointed by warrant published in the *London Gazette*, August 10, 1888, in pursuance of the power contained in the Customs Consolidation Act, 1870, s. 11.

(*b*) Metropolitan Police Act, 1839, s. 5; 12 Halsbury's Statutes 768.

(*c*) Metropolitan Police Act, 1829, s. 4; 12 Halsbury's Statutes 744; Metropolitan Police Act, 1839, s. 5; *ibid.*, 768, and Port of London (Consolidation) Act, 1920, s. 283; 18 Halsbury's Statutes 683.

General Powers and Duties (d).—It is the duty of the port authority to take such steps from time to time as they may consider necessary for the improvement of the River Thames within the Port of London and the accommodation and facilities afforded there, and for these purposes they may carry on the undertaking of any dock company transferred to them, acquire any undertaking affording accommodation or facilities for loading, unloading or warehousing goods, construct and manage docks, quays, wharves, etc., and exercise any other powers conferred on them by the Port of London (Consolidation) Act, 1920 (e).

As harbour authority they are entitled to limit their liability in accordance with the provisions contained in the Merchant Shipping (Liability of Shipowners and others) Act, 1900. [826]

Charging Powers (f).—The port authority's main sources of revenue are derived from port rates on goods (g), river duties of tonnage and tolls (h), rates for services to goods (i), and rates on vessels using the docks (k). [827]

General Financial Provisions (l).—Before the passing of the Port of London (Consolidation) Act, 1920, the port authority had issued various port stocks, which are still transferred, dealt with and redeemed in accordance with the regulations (m) made by the Board of Trade (n).

The port authority may borrow money by the issue of port stock or in such other manner as the M. of T. may by order direct (o), and for the purpose of paying off a loan they have the like powers of re-borrowing as a county council have under sect. 69 of the L.G.A., 1888 (p).

All port stock created by the port authority under the powers of the Port of London (Consolidation) Act, 1920, is issued, transferred, dealt with and redeemed in accordance with regulations (q) to be made by order of the M. of T. (r).

The port authority may also obtain advances of money (s), issue and renew bills (t), issue and renew bonds (u), and receive money on deposit (a). [828]

Provisions relating to the Docks and Works (b).—The port authority have power to make and maintain bridges, roads, quays, locks, etc. (e), to supply the docks, etc., with water from the River Thames and the River Lee (d), to dredge the docks (e) and to maintain the depth of water at the entrance to the docks (f). On payment of the rates, the

(d) Port of London (Consolidation) Act, 1920, Part II.

(e) *Ibid.*, s. 9.

(f) *Ibid.*, Part III.

(g) *Ibid.*, ss. 13—44.

(h) *Ibid.*, ss. 45—58.

(i) *Ibid.*, s. 59, and Port of London (Dock Charges) Act, 1923, s. 3.

(k) *Ibid.*, ss. 60—62; *ibid.*, s. 4.

(l) Port of London (Consolidation) Act, 1920, Part IV.

(m) These regulations are S.R. & O., 1909, No. 284; 1911, No. 386; and 1917, No. 87.

(n) Port of London (Consolidation) Act, 1920, s. 96 (4).

(o) *Ibid.*, s. 95 (2).

(p) *Ibid.*, s. 95 (4).

(q) S.R. & O., 1921, No. 1700.

(r) Port of London (Consolidation) Act, 1920, s. 96 (4).

(s) *Ibid.*, s. 98.

(t) *Ibid.*, s. 99 (1).

(u) *Ibid.*

(a) *Ibid.*

(b) *Ibid.*, Part V.

(c) *Ibid.*, s. 112.

(d) *Ibid.*, s. 121.

(e) *Ibid.*, s. 123.

(f) *Ibid.*, s. 125.

docks and works are open to all persons for the shipping, conveyance and unshipping of goods and the embarking and landing of passengers (*g*), and the owner or master of any vessel resorting to the docks is at liberty to take such vessel to any dock that he may select, provided that there is sufficient vacant accommodation at such dock (*h*). The port authority may appoint constables to act within the limits of the docks and works and within one mile thereof (*i*), and may also appoint and license meters and weighers (*k*).

Superintendents and dockmasters have power to regulate the vessels in the docks (*l*). The port authority may also issue certificates or warrants for goods (*m*). Hazardous goods brought into the docks must be marked (*n*), and dangerous articles may be altogether excluded (*o*), whilst no goods may pass outward from the docks or premises of the port authority unless a pass for the goods, signed by the officer of the port authority appointed by them to grant passes, is produced at the gates or entrances (*p*). [829]

General Powers and Provisions relating to the River Thames (*q*).—It is lawful for all persons, whether for pleasure or profit, to go and be, pass and repass in vessels over or upon any and every part of the Thames through which Thames water flows, including all such backwaters, creeks, side-channels, bays and inlets connected therewith as form parts of the said river (*r*), subject to payment of all river duties of tonnage and tolls payable (*s*), and subject to vessels being regulated in accordance with the directions of the harbour masters (*t*), being navigated with care and caution (*u*) and complying with any bye-laws made by the port authority (*a*). The port authority have power to dredge the Thames, improve its bed and channel, reduce or remove shoals, shelves, banks or other accumulations and abate or remove impediments, obstructions, etc. (*b*), and are under an obligation to form a channel between the Nore and Gravesend not less than thirty feet deep at low water at ordinary spring tides and not less than one thousand feet wide throughout (*c*). They are also under a duty to preserve the flow and purity of the water of the Thames and its tributaries down to the western boundary of the County of London (*d*), and penalties can be incurred by persons throwing ballast, etc., into the river or allowing offensive matter to flow into it (*e*), and causing sewage to be sent into the Thames (*f*), but the right to prosecute under the provisions of the Port of London (Consolidation) Act, 1920, relating to pollution is in the port authority only (*g*). [830]

The port authority may grant licences to the owner or occupier of any land adjoining the Thames for the construction of docks, basins, piers, etc., in front of his land and into the body of the Thames (*h*), but no works upon the bed or shores of the Thames must be commenced or

(*g*) Port of London (Consolidation), Act, 1920, s. 63.

(*h*) *Ibid.*, s. 127.

(*i*) *Ibid.*, s. 129.

(*j*) *Ibid.*, s. 166.

(*k*) *Ibid.*, s. 182.

(*l*) *Ibid.*, Part VI. For the definition of the River Thames for the purposes of this part of the Act, see s. 197.

(*m*) *Ibid.*, s. 210 (1).

(*n*) *Ibid.*, ss. 207, 268.

(*o*) *Ibid.*, s. 279.

(*p*) *Ibid.*, s. 216.

(*q*) *Ibid.*, s. 238.

(*r*) *Ibid.*, s. 238.

(*i*) *Ibid.*, s. 128.

(*l*) *Ibid.*, s. 187.

(*n*) *Ibid.*, s. 181.

(*p*) *Ibid.*, s. 185.

(*x*) *Ibid.*, ss. 45—58.

(*u*) *Ibid.*, s. 278.

(*b*) *Ibid.*, s. 215.

(*d*) *Ibid.*, s. 227.

(*f*) *Ibid.*, s. 229.

(*h*) *Ibid.*, s. 243.

executed with the licence of the port authority unless they have been previously approved by the Board of Trade (i), and works which have not been so approved are liable to be removed (k). [831]

The port authority have also power to make bye-laws for the river (l), issue licences to watermen and lightermen (m) and register and issue certificates relating to craft and boats (n). [832]

Provisions relating to Particular Parts of the Docks and Works (o).—The port authority must maintain and keep in perpetual repair bridges carrying highways over the entrance locks in their various groups of docks (p), maintain and regulate the Surrey Canal (q) and maintain the railway from the North Woolwich branch of the London and North Eastern Railway to Gallions Reach (r). [833]

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- (i) Port of London (Consolidation) Act, 1920, s. 244.
 - (k) *Ibid.*, s. 246.
 - (l) *Ibid.*, s. 279.
 - (m) *Ibid.*, ss. 315 *et seq.*
 - (n) *Ibid.*, ss. 348 *et seq.*, and Port of London Act, 1926, s. 5.
 - (o) Port of London (Consolidation) Act, 1920, Part VII.
 - (p) *Ibid.*, s. 378.
 - (q) *Ibid.*, ss. 397 *et seq.*
 - (r) *Ibid.*, s. 411.
-

POSITIVE COVENANTS

INTRODUCTION	PAGE	ENFORCEMENT	PAGE	POSITIVE
COVENANTS RUNNING WITH THE LAND	311	COVENANTS	312	313
	312			

*See also titles : NEW ROADS ;
RESTRICTIVE COVENANTS.*

Introduction.—A covenant is an agreement under seal between two or more persons or corporate bodies to do one or more things or to refrain from or prevent the doing of something (a). The subject is therefore part of the law of contract, but cases in which the term "covenant" is used, rather than "agreement" or "contract," are usually found in connection with the sale of land, with the relations of landlord and tenant, and with restraint of trade. Covenants may be positive agreements to do something, or negative agreements not to do something; the latter are dealt with under the title RESTRICTIVE COVENANTS. [834]

Local authorities are concerned with covenants in respect of any land they may acquire, as for housing schemes (in regard to which the covenants are likely to be mainly restrictive), for open spaces (where it may be found that user of the land is limited in the interest of the

(a) See *Randall v. Lynch* (1810), 12 East, 179 ; 17 Digest 380, 1984.

vendor, or to secure the furtherance of some object), and for the making of roads. The last-mentioned are becoming more numerous and important, both between owners and local authorities, and between two or more local authorities in regard to road widening. Positive covenants may be found in such agreements, as where an owner gives up a forecastle for road widening with no compensation, in return for some concession as to pavement rights or canopies, or where an owner gives up strips of land without compensation in return for a covenant from the local authority to use their endeavours to obtain an order for the closing or diversion of a highway. Covenants may also be made as to the maintenance of vaults under a road, the setting up and maintenance of new railings, and the care of trees.

The most important matter to consider is whether any covenant in regard to land acquired by a local authority *runs with the land*. [835]

Covenants running with the Land.—By sect. 80 (4) of the Law of Property Act, 1925 (b), a covenant runs with the land when the benefit or burden of it passes to the successors in title of the covenantor or the covenantee, and by sect. 80 (2) the burden or benefit of every covenant running with the land vests in or binds the person succeeding to the title of the covenantee or covenantor. Sect. 84 (c) as to discharging or modifying a covenant applies only to restrictive covenants, and a positive covenant is not among those mentioned in sect. 10 of the Land Charges Act, 1925 (d), as registrable under that Act. [836]

Only some positive covenants run with the land. In *Austerberry v. Oldham Corporation* (e), LINDLEY, L.J., said :

"I am not prepared to say that any covenant which imposes a burden upon land does run with the land, unless the covenant does, when the deed is properly construed, amount to either a grant of an easement, or a rent-charge, or some estate or interest in the land. A mere covenant to do something—a covenant to repair or something of that kind—does not seem to me to run with the land in such a way as to bind those who may acquire it."

It was said in *Horsey Estate, Ltd. v. Steiger* (f) that the true principle is that no covenant or condition which affects merely the person and which does not affect the nature, quality or value of the thing demised or the mode of using or enjoying the thing demised runs with the land. The erection and maintenance of a sea wall has been held to run with the land (g), so also the erection of a pump and a supply of water (h), the building of a footbridge (i), and the payment of compensation for subsidence due to the working of minerals (k). On the other hand a covenant to make and maintain a road as a public road, upon land purchased from the covenantors adjacent to land reserved by him, was held to be collateral and not to pass to an assignee of the covenantee (l),

(b) 15 Halsbury's Statutes 259.

(c) *Ibid.*, 260.

(d) *Vide* s. 10, Class D.; 15 Halsbury's Statutes 584.

(e) (1885), 29 Ch. D. 750; 31 Digest 142, 2769. See also *Spencer's Case* (1588), 5 Co. Rep. 16a; 31 Digest 144, 2798.

(f) [1890] 2 Q. B. 79; 31 Digest 145, 2805.

(g) *Morland v. Cook* (1868), L. R. 6 Eq. 252; 40 Digest 304, 2613.

(h) *Morland v. Cook*, *supra*.

(i) *Hubbard v. Weldon* (1909), 25 T. L. R. 356; 40 Digest 305, 2619.

(k) *Dyson v. Forster*, [1909] A. C. 98; 34 Digest 680, 709.

(l) *Austerberry v. Oldham Corp.*, *supra*.

as were a covenant to build upon land charged with a rent and to keep buildings in repair (*m*), and to build on land adjoining (*n*). [§37]

Enforcement of Positive Covenants.—As a general rule the courts will not enforce execution of a positive covenant by an injunction (*o*), but merely by damages. But though the court will not as a rule specifically enforce contracts to build or repair, it will do so in cases where the contract for building is in its nature defined (*p*). An owner who reserves covenants for the benefit of his other land in the neighbourhood cannot enforce the covenants after parting with all his land (*q*). A covenant in form positive but in substance negative may be enforced as if negative (*r*), and if it is partly positive and partly negative the negative part may be enforced, if capable of separate enforcement, as if it were a separate covenant (*s*). [§38]

(*m*) See *Dewar v. Goodman*, [1909] A. C. 72; 31 Digest 145, 2806.

(*n*) *Thomas v. Haywood* (1869), L. R. 4 Exch. 311; 31 Digest 156, 2897.

(*o*) *Lumley v. Wagner* (1852), 1 De G. M. & G. 604; 28 Digest 452, 706.

(*p*) *Hepburn v. Leather* (1884), 50 L. T. 660; 40 Digest 306, 2622.

(*q*) *Formby v. Barker*, [1903] 2 Ch. 539; 40 Digest 306, 2626.

(*r*) *Catt v. Tourle* (1869), 4 Ch. App. 654; 31 Digest 109, 2446.

(*s*) *Clegg v. Hande* (1890), 44 Ch. D. 503; 31 Digest 109, 2448.

POSTAL, TELEGRAPH AND TELEPHONE SERVICES

PAGE	PAGE
INTRODUCTORY - - - - - 813	LOCAL AUTHORITIES AND TELE-
MONOPOLY OF POSTMASTER-GENERAL - - - - - 314	GRAPHIC SERVICES AND FACILITI-
THE TELEGRAPH ACTS - - - - - 314	TIES - - - - - 316
CONSTRUCTION AND MAINTENANCE OF TELEGRAPHHS - - - - - 315	Under Post Office Acts - - - - - 316
CONDUCT OF TELEGRAPH BUSINESS - - - - - 315	Under the Telegraph Acts - - - - - 316
ACTS RELATING TO TELEPHONES - - - - - 316	Telegraphs under Streets and Public Roads - - - - - 318
ACTS RELATING TO WIRELESS TELEGRAPHY - - - - - 316	APPLICATION OF THE TELEGRAPH ACTS TO LICENCES - - - - - 319

See also titles :

BREAKING UP OF ROADS;
OVERHEAD WIRES;

ROAD TRAFFIC;
WIRELESS.

[As to postal facilities and other matters involving the co-operation of local authorities, particularly with regard to the establishment of posts and post-offices, see title *POSTMASTER-GENERAL*.]

Introductory.—Previous to 1868 there were many companies, formed under various special Acts or charters legalising interference with public and private rights of property, and conferring compulsory powers of purchase on them, for purposes of telegraphy. In that year, however, general legislation was initiated for the purpose of

facilitating and controlling the telegraph undertakings of these various companies, and the first of the Telegraph Acts was passed (*a*). By the Telegraph Act, 1868 (*b*), the growing importance of telegraphy as a source of revenue was appreciated and the Postmaster-General was empowered to acquire certain undertakings. This power of purchase was extended by the Telegraph Act, 1869 (*c*), in which he was given the power of transmitting telegrams. Further powers were conferred by Acts of 1878, 1892, 1899, 1908 and 1911 (*d*). By the 1899 Act telephones were made the subject of legislation, and provision was made for wireless telegraphy.

"Telegraph"⁵ is defined by the Telegraph Acts in terms sufficiently wide to include telephones and wireless telegraphy (*e*), but each of the latter is also the subject of special legislation (*f*), and though the expression "telephone" had been used in legislation previously to 1899 (*g*) before the Act of that year there were no enactments relating to telephones. The term "telegram" it may be noted, means any message or other communication transmitted or intended for transmission by a telegraph (*h*). [839]

Monopoly of Postmaster-General.—As in the case of post office services (*i*), power is given to the Postmaster-General, in the exercise of his monopoly, for the delegation of his powers and duties in regard to telegraph services (*k*). Further, the exclusive privilege conferred on the Postmaster-General in this behalf is subject to certain exceptions and exemptions which do not, in every case, concern the present article (*l*). Pneumatic and other tubes used in the transmission of telegraphic messages are subject to certain provisions of the Telegraph Acts (*m*), but submarine cables are not within the scope of these enactments. [840]

Telegraph Acts.—The Telegraph Acts contain a code of law empowering the Postmaster-General to deal with all matters concerning telegraph and telephone facilities, including the construction and maintenance of telegraphs on and in streets, public roads and the seashore. Provisions are included for the user of private property for telegraph "works," subject to consent and payment of compensation to lessee or owner (*n*). An owner, lessee or occupier of lands or buildings can

(*a*) 26 & 27 Vict. c. 112. For a complete list of these Acts, see 19 Halsbury's Statutes 200.

(*b*) 19 Halsbury's Statutes 240.

(*c*) S. 7; *Ibid.*, 258.

(*d*) *Ibid.*, 261—300.

(*e*) See *A.G. v. Edison Telephone Co. of London* (1880), 6 Q. B. D. 244, 249; 42 Digest 885, 1.

(*f*) See *post* and the 1899 Act and the Wireless Telegraphy Acts, 1904, 1925 and 1926; 19 Halsbury's Statutes 288 *et seq.*

(*g*) E.g., P.H.A. Amendment Act, 1890, ss. 13, 14 and 15; 13 Halsbury's Statutes 828—829.

(*h*) See s. 3 of the 1868 Act, and s. 3 of the 1869 Act; 19 Halsbury's Statutes 219, 251.

(*i*) See title POSTMASTER-GENERAL.

(*k*) See Telegraph Acts, 1868, 1869 and 1892; 19 Halsbury's Statutes 240, 251, 282.

(*l*) For these see *post*, and 19 Halsbury's Statutes 210.

(*m*) 1892 Act, s. 8; *ibid.*, 285.

(*n*) See Acts of 1868, ss. 6 (4), 12, 13, 21—23; 19 Halsbury's Statutes 222 *et seq.*; 1878, ss. 3, 4; *ibid.*, 262, 268; and the Telegraph (Construction) Acts, 1908, s. 2, and 1916, s. 1; *ibid.*, 298, 307.

by the Telegraph Act, 1863 (*o*), require the removal of telegraph works constructed in, on, upon, over, along or across his land, when such is required for building or other purposes. The Telegraph Acts all extend to the whole of the United Kingdom, most of them to the Isle of Man, and many to the Channel Islands as well as the United Kingdom. Wireless telegraphy legislation applies also to British and foreign ships in certain waters. Statutes relating to submarine cables, however, are not included in the group of enactments known as the Telegraph Acts. [841]

Construction and Maintenance of Telegraphs.—Powers are provided under the Telegraph Acts for dealing with the following matters in connection with the construction and maintenance of telegraphs :

(i.) Right to construct and maintain works, including telegraph lines and posts over railways and canals (*p*). Restrictions affecting railways and canals, such as consents in certain circumstances, are contained in sects. 3, 4 of the Telegraph Act, 1878 (*q*), and provisions regarding telegraph lines, in the Railway Regulation Act, 1844, sects. 18 and 14 (*r*), and the Telegraph Act, 1868 (*s*). It should be noted here that the provisions of Part II. of the P.H.A. Amendment Act, 1890, relating to danger from telegraph wires, specially exempted any post, wire, tube or other apparatus or property of the Postmaster-General. See now sect. 26 of the P.H.A., 1925 (*t*), and notes to sect. 149 of the P.H.A., 1875, in Lumley's Public Health (*u*). For the powers and duties of the Postmaster-General as to placing, maintaining or altering telegraphic lines, see sect. 6 of the Telegraph Act, 1878 (*a*).

(ii.) Interference with gas and water pipes. Powers are conferred in this connection by sects. 6 (*g*) and 8 of the Telegraph Act, 1863 (*b*), and sect. 7 of the Telegraph Act, 1878 (*c*). As to telegraphs under or over streets and public roads, see sects. 9—12 of the 1863 Act. The points of contact between the Postmaster-General and local authorities in this connection will be treated below. [842]

Conduct of Telegraphic Business.—It is not within the scope of this article to discuss in detail the general conduct of telegraphic business ; these matters will be found fully treated in 27 Halsbury (*d*). It need only be mentioned here that though the Postmaster-General is not liable in his official capacity for the torts of his subordinates or delegates engaged in carrying out the work of the telegraphic department (*e*), a telegraphic company is liable in damages for accidents and injuries sustained through acts or defaults of the company's servants (*f*).

(*o*) Ss. 21 (*3*), 30 ; 19 Halsbury's Statutes 228, 231.

(*p*) Telegraph Act, 1863, s. 6 (*4*) ; *ibid.*, 222 ; Telegraph (Construction) Act, 1911, ss. 1, 2 ; *ibid.*, 300, 302.

(*q*) 19 Halsbury's Statutes 262, 263.

(*r*) 14 Halsbury's Statutes 27.

(*s*) S. 9 (*4*), (*5*) ; 19 Halsbury's Statutes 244.

(*t*) 13 Halsbury's Statutes 1124.

(*u*) 10th ed., Vol. I., pp. 280 *et seq.*

(*v*) 19 Halsbury's Statutes 264. By s. 23 (*2*) of the Restriction of Ribbon Development Act, 1935, nothing in that Act is to affect the powers and duties of the Postmaster-General under the Telegraph Acts, 1863—1926.

(*b*) 19 Halsbury's Statutes 222.

(*c*) *Ibid.*, 265. But see *Postmaster-General v. Birmingham Corpn.*, [1936] 1 K. B. 66 ; Digest (Supp.), as to payment of expenses of altering a telegraph line in connection with work under a town planning scheme.

(*d*) See also 19 Halsbury's Statutes 213, 214.

(*e*) See *Bainbridge v. Postmaster-General*, [1906] 1 K. B. 178 ; 37 Digest 369, 1.

(*f*) Telegraph Act, 1863, s. 42 ; 19 Halsbury's Statutes 235.

As to such matters as differences arising out of the application of the Telegraph Acts (including disputes following upon failure to give consent) and the machinery provided for adjusting them; for provisions for compensation connected with various matters included in the Acts, and for general penal provisions of the Acts, reference should be made to 27 Halsbury. [843]

Acts relating to Telephones.—As pointed out above, a telephone being a "telegraph" within the meaning of the Telegraph Acts, the provisions of those enactments apply equally to telephones. It need only be mentioned here that within recent years a system of transmitting telegrams by telephone has been developed by the post office; but see "Application of Telegraph Acts to Licences," *post*. [844]

Acts Relating to Wireless Telegraphy.—Though the Telegraph Acts apply to wireless telegraphy, several Acts have been passed relating specifically to wireless telegraphy, viz.: (i.) the Wireless Telegraphy Act, 1904; (ii.) the Wireless Telegraphy (Explanation) Act, 1925; and (iii.) the Wireless Telegraphy (Blind Persons Facilities) Act, 1926 (g); which have been continued by various Expiring Laws Continuance Acts. The first two of these measures deal with the issue of licences, including those connected with the conduct of experiments. The third is concerned with special licences for blind persons. Generally, with regard to wireless, and the powers of a local authority in this connection under sect. 26 of the P.H.A., 1925 (h), reference should be made to title WIRELESS. It is only necessary to mention here that all matters in connection with the control of wireless reception, etc., by private individuals are within the control of the Postmaster-General, and come within his powers under his general monopoly. [845]

Local Authorities and Telegraphic Services and Facilities. Under Post Office Acts.—The provisions of the Post Office Act, 1908 (i), as amended by the L.G.A., 1933, dealing with the establishment of posts and post offices (with or without telegraph facilities) will be found discussed in the title POSTMASTER-GENERAL. By sect. 49 of the 1908 Act (as amended by the L.G.A., 1933), councils of boroughs and urban districts may contribute to the cost of such provision in various ways (k) when they consider that such a provision would be beneficial to the inhabitants of the borough or urban district. By the same section they are enabled to contribute towards the provision of additional post or telegraph offices in the same circumstances (k). Similar powers are conferred upon rural district councils and parish councils and meetings (where there is no parish council) to provide similar facilities. A R.D.C., however, cannot exercise their powers in this behalf without the consent of the parish council or parish meeting. As to the expenses incurred by these authorities, and borrowing powers, see the title POSTMASTER-GENERAL. [846]

Under the Telegraph Acts.—The Telegraph Act, 1863 (l), contains the powers of "every company to be hereafter authorised by special Act of Parliament to construct and maintain telegraphs" (m) to

(g) 19 Halsbury's Statutes 289, 315, 316.

(h) Which deals with the making of bye-laws in connection with wireless installations on or over premises, and the control of the offensive use of wireless apparatus.

(i) Ss. 84, 49; 18 Halsbury's Statutes 51, 57.

(k) See title POSTMASTER-GENERAL.

(l) 19 Halsbury's Statutes 219.

(m) See "Introductory" as to the monopoly of Postmaster-General.

execute the necessary "works." By sect. 3 of the Act "work" is defined to include telegraphs and posts, and a "telegraph" means a wire or wires used for the purpose of telegraphic communication. "Street" and "public road" are also defined. The Act therefore brings a "telegraph company" into contact with local authorities as highway authorities, and gives statutory authority for interference with highways under their control. By the Telegraph Act, 1868, sect. 2 (n), the term "company" is extended to include the Postmaster-General.

Generally, a telegraphic company is empowered to place and maintain a telegraph under any street or public road, and may alter and remove the same. They may place and maintain a telegraph over, along or across any street or public road and alter and remove the same, and for these purposes are empowered to open or break up a street or public road and alter the position of gas and water pipes which are not mains, provided, in both cases, they are not to be deemed to acquire any right other than that of user in the soil of the street or public road concerned (o).

In the exercise of the above powers the company must do as little damage as possible, and must make full compensation to all bodies and persons interested (e.g. the highway authority concerned) for all damage sustained by them while carrying out the work. The amount and application of such compensation is determined in the manner provided by the Lands Clauses Consolidation Act, 1845, and any Acts amending that Act for the determination of the amount and application of compensation for lands taken or injuriously affected (p).

As to statutory remedies and adjustment of differences which may arise from the application of the provisions of the Telegraph Acts, see 27 Halsbury 377 *et seq.*, where, *inter alia*, the following matters are dealt with: cases of compulsory acquisition of undertakings, rights, interests in property, and cases of damage and injury.

[847]

With regard to interference with gas and water pipes the following matters must be mentioned. Before the telegraph company alter the position of such pipe they must give notice of their intention to do so, and state the time at which they will begin to do so, and the notice must be given twenty-four hours at least before the commencement of the work. Furthermore the work must not be executed save under the superintendence of the body to whom the pipes belong, unless they refuse or neglect this superintendence at the time specified in the notice, or discontinue during the actual work. The company must execute the work to the reasonable satisfaction of the body concerned and pay all reasonable expenses of the superintendence, if given.

The owning body are empowered also, when and as occasion requires, to alter the position of any work of the company already constructed under, in or upon a street or public road, on the same conditions as above imposed on the company. Further provisions as to works involving alteration in a telegraph line are contained in the Telegraph Act, 1878 (q). [848]

(n) 19 Halsbury's Statutes 240.

(o) Telegraph Act, 1868, s. 6; 19 Halsbury's Statutes 222.

(p) *Ibid.*, s. 7; 19 Halsbury's Statutes 222; see also notes to that section.

(q) S. 7; 19 Halsbury's Statutes 265.

Telegraphs under Streets and Public Roads.—The following restrictions are imposed by the 1863 Act in regard to this matter :

(i.) Telegraphs must not be placed under any street (in London, within the limits of the authority of the Metropolitan Board of Works, i.e. the L.C.C.) of any city or municipal borough or town corporate or town with a population of 30,000 or upwards except with the consent of the bodies having the controlling interest (r). (By the Telegraph Act, 1892 (s), the provisions of the Telegraph Acts, 1863 and 1878, relating to streets, public roads, etc., are extended to apply to streets, public roads, etc., within the limits of any urban authority, and for the purposes of those Acts a public road or street includes a public highway for carriages, and a public way, although not repairable in manner mentioned in the 1863 Act; and the term "public road" is to include a public highway for horses, and a private road which is also a public footpath, if such highway or road is enclosed between hedges, walls or other fences.)

(ii.) The depth, course, etc., of underground works is to be settled between the company and the street or road authority and differences determined in the manner prescribed (t).

(iii.) The work must be completed and reinstatement made as soon as possible, during which time the work must be fenced, watched and lighted (a).

(iv.) Payments are to be made to the controlling body for the expense of keeping the street or road in repair for six months, so far as that expense has been increased by reason of the breaking up (a).

(v.) The controlling body can do the work of breaking-up instead of the company (or Postmaster-General), and should it do so, may recover expenses from them or him.

(vi.) Only a certain prescribed extent of the roadway may be opened up at one time, i.e. not more than one-third of the width (b). [840]

Further restrictions are imposed by the Act with regard to the maintenance of the works. Underground tubes and pipes must have distinguishing marks, and above-ground telegraphs must not be placed at such a height as to interfere with passage in the street, etc. Where any part of the works is abandoned or suffered to fall into decay, or the company is dissolved or ceases for six months to carry on the business, then the controlling authority may give notice to the company stating that if the works specified in the notice are not removed within one month, the same will be removed by the controlling body. Should the latter do so they may, without prejudice to any remedy against the company, remove the works or any part of them and sell the materials, out of the proceeds of which sale they may reimburse themselves for the expenses of the notice, removal and sale, and recover any unpaid residue of expenses due from the company, repaying the surplus, if any, to the company (c).

Where a controlling authority (e.g. a highway authority) resolves to alter the line or level of any portion of a street or public road under, in, upon, over, along or across which any work of a telegraph company

(r) As to which see *Postmaster-General v. Hendon U.D.C.*, [1914] 1 K. B. 564 ; 42 Digest 888, 19.

(s) S. 3 ; 19 Halsbury's Statutes 288.

(t) Telegraph Act, 1863, s. 10 ; *ibid.*, 223.

(a) *Ibid.*, s. 18 ; *ibid.*, 227.

(b) *Ibid.*, s. 20.

(c) *Ibid.*, s. 14.

has been done, the company must be served with one month's notice of the alteration. They will then be required at their own expense to remove such work and replace it in the position required by the controlling body (*d*). Where any difference arises under this section, between the Postmaster-General and the highway authority or body having control of the street or public road, it is to be settled under the provisions of sect. 4 of the Telegraph Act, 1878 (*e*).

Where the controlling body consider a post in or upon a street or public road to be dangerous or inconvenient, it must be removed or placed in a different position after a fourteen days' notice, subject to a seven days' counter notice if the company or Postmaster-General objects. A difference arising under this head is to be settled in the manner prescribed (*f*). [850]

The Act of 1878 amends the 1863 Act with regard to consents that may be given or withheld by a controlling authority concerning the powers of the Postmaster-General to place telegraphs in, under, along, over or across streets or public roads, as to which reference should be made to sect. 3 of the 1878 Act (*g*).

Telegraph companies, but not the Postmaster-General, are required to conform to regulations lawfully made by local authorities with regard to the safety and convenience of traffic under any public or local Act (*h*). The Postmaster-General is also exempted from any of the provisions contained in sects. 18, 15 (1) of the P.H.A. Amendment Act, 1890, with regard to prevention of danger from telegraph wires (*i*). [851]

Application of the Telegraph Acts to Licences.—By sect. 5 of the Telegraph Act, 1892 (*k*), the Postmaster-General is enabled to license companies or persons to exercise the powers conferred on him by the Acts of 1863, 1878 and 1892, subject to the following provisions : (i.) that the licensee may only exercise these powers in an urban district or area adjoining, such as is described in the licence, and (ii.) that a licensee may not exercise any powers under the above Acts without the consent, in an urban district outside London, of the urban authority, and elsewhere (outside London) of the county council, and must conform to any terms and conditions which these authorities may attach to such consent.

By sect. 2 (1) of the 1899 Act (*l*) it is provided that where the council of a borough or an urban district are licensed by the Postmaster-General to provide a system of public telephonic communication, they may defray their expenses in the manner provided by that section. [852]

(*d*) Telegraph Act, 1863, s. 15.

(*e*) 19 Halsbury's Statutes 263.

(*f*) Generally as to settlement of differences, see 27 Halsbury's Statutes 613 *et seq.*

(*g*) 19 Halsbury's Statutes 262. The following cases and others on the same point collected in 42 Digest 892–894 should be consulted : *Postmaster-General v. London Corpns.* (1898), 78 L. T. 120 ; *Postmaster-General v. Glasgow Corpns.* (1900), 10 Ry. & Can. Tr. Cas. 288 ; *Postmaster-General v. Hutchings*, [1916] 1 K. B. 774.

(*h*) See title ROAD TRAFFIC for these regulations.

(*i*) These two sects ; 13 Halsbury's Statutes 828, 829, have been virtually replaced by P.H.A., 1925, s. 25 ; *ibid.*, 1123 ; though sub-s. (4) preserves bye-laws made thereunder until revoked by a resolution of a local authority.

(*k*) 19 Halsbury's Statutes 284.

(*l*) *Ibid.*, 288.

POSTMASTER-GENERAL

	PAGE		PAGE
INTRODUCTORY - - -	320	CONTRIBUTIONS TOWARDS NEW	
IMMUNITY OF POSTMASTER-GENERAL - - -	321	POST OFFICES BY LOCAL	
POWERS OF POSTMASTER-GENERAL	321	AUTHORITIES - - -	323
DEALINGS WITH LAND - - -	322	EXPENSES - - -	323
ESTABLISHMENT OF POSTS AND POST OFFICES - - -	322	Boroughs and Urban Districts -	323
		Rural Districts - - -	323
		Parish Councils - - -	323
		BORROWING POWERS - - -	324

*See also titles : BORROWING ;
POSTAL, TELEGRAPH AND TELEPHONE SERVICES.*

Introductory.—The origin of the post office is to be found in the messengers, provided by the Crown, who started at fixed times, and travelled by means of relays of horses, carrying letters between London and several principal provincial towns. A monopoly of the right so to carry what we now call "mails" was subsequently claimed, and embodied in an Ordinance of the Protectorate, which was replaced by a statute soon after the Restoration. The monopoly has been re-granted in practically the same form in a succession of enactments culminating in the Post Office Act, 1908 (*a*). This monopoly covers the transmission of inland, foreign and colonial correspondence; the transmission of telegraphic messages (*b*) and conduct of telephone communications, and control of wireless telegraphy. The activities of the post office are further concerned with such matters as the issue and transmission of money orders and postal orders; conduct of the Post Office Savings Bank and investments in Government securities; life insurances and grant of annuities through the Bank of England. The issue of National Health Insurance stamps was added by the Finance Act, 1918. It undertakes the business of selling postage stamps, post-cards, letter-cards, etc.; issues local taxation licences (dog, gun, etc.); carries parcels; pays old age pensions, and carries out certain other Government business of less importance. [§53]

The business of the post office is controlled and carried out by the Postmaster-General, an Assistant Postmaster-General (*c*) and a staff of permanent officials. The appointments of Postmaster-General and Assistant Postmaster-General do not disqualify the holders, who are members of the Government of the day, from election to, or sitting and voting in, the House of Commons. The Postmaster-General is appointed by the King by letters patent, and has power by statute (*d*) to appoint such officers, deputies, agents and servants as may seem

(*a*) 18 Halsbury's Statutes 39.

(*b*) As to which see title POSTAL, TELEGRAPH, ETC., SERVICES.

(*c*) Assistant Postmaster-General Act, 1909, s. 1; 12 Halsbury's Statutes 512.

(*d*) Post Office Act, 1908, s. 42; 13 Halsbury's Statutes 54.

necessary to him, his salary, together with that of the Assistant Postmaster-General and of the permanent staff being paid out of moneys annually voted by Parliament upon estimates submitted by the Treasury. [854]

Immunity of Postmaster-General.—No liability rests upon the Postmaster-General for wrongful acts done by his subordinates while engaged in carrying out the business of the post office (e). He is not liable for the loss of a postal packet in course of its transmission in the post, nor for injury to the same, while all acts required to be done by, to, or before him, may be done by the officers appointed by him (f). He, and any person in his employ, or in the employment of any person under him on behalf of the post office cannot be compelled to serve as mayor or sheriff, nor in any ecclesiastical or other public office or employment, or on a jury or inquest, or in the militia. The Postmaster-General and officers appointed by him are further protected by the Public Authorities Protection Act, 1893 (g).

Registration of postal packets, or the giving of a certificate of posting, imposes no liability upon the Postmaster-General in the event of the postal packet or its contents being lost. But it is customary for him, in accordance with certain rules and, of course, within certain limits, to pay compensation for loss of or damage to registered packets and parcels, etc., together with certain insured foreign and colonial postal packets and insured inland parcels, as an act of grace (h). In cases where delivery cannot be carried out or is refused, there is no obligation imposed on the Postmaster-General to return the postal packet by post to the sender, it being his duty merely to deliver the packet as addressed. But here, again, it is the general practice to return, post free, letters and parcels in cases where the name and address of the sender is known, and provision is made in sect. 56 (2) of the Post Office Act, 1908 (i), for opening a postal packet to obtain this information. Postcards and newspapers, on the other hand, are only returned to the sender if they bear such a direction, and then a second postage is chargeable (k). [855]

Powers of Postmaster-General.—Among the general powers of the Postmaster-General are included those of establishing posts and post offices (l) as he thinks expedient; to collect, receive, forward, convey and deliver all postal packets transmitted within, or to, or from the British Isles (including the Channel Islands and the Isle of Man), or any British possessions, subject to the provisions of the Post Office Act, 1908. He has also the power, subject to the consent of the Treasury, to authorise the collection and dispatch of letters, etc., otherwise than by post (m), by an officer of the post office, in accordance with conditions and restrictions contained in post office regulations.

(e) *Lane v. Cotton* (1701), 1 Ld. Raym. 646; 37 Digest 369, 3; and *Whiffield v. Le Despencer (Lord)* (1778), 2 Cwyp. 754; 37 Digest 369, 4.

(f) Post Office Act, 1908, s. 13; 13 Halsbury's Statutes 43.

(g) 13 Halsbury's Statutes 455.

(h) See Inland Post Warrant, 1903, as amended by Inland Post Amendment (No. 13) Warrant, 1911 (S.R. & O., 1911, p. 327); and Post Office Guide.

(i) 13 Halsbury's Statutes 61.

(k) Inland Post Warrant, 1903, s. 46.

(l) As to which, see *post*.

(m) Post Office Act, 1908, s. 14 (a); 13 Halsbury's Statutes 44. See the conditions contained in the District Messenger Company Warrant, 1907 (S.R. & O., 1907, p. 918).

Generally, then, the P.M.G. has the exclusive privilege in His Majesty's dominions, of conveying letters, etc., from place to place, and of performing the many incidental services connected with the same, subject to certain exceptions which need not be mentioned here (*n*). On his representation, the Treasury may, by warrant (*o*), make regulations with regard to matters which, under the Post Office Act, 1908, can be effected by regulations, e.g. for preventing the sending of indecent prints or literature by post (*p*). He also possesses the power of detaining any postal packet (*q*) which is suspected of containing contraband goods and forwarding the packet to the Commissioners of His Majesty's Customs (*r*). [856]

Dealings with Land.—By sect. 45 of the Post Office Act, 1908 (*s*), the Postmaster-General is empowered to acquire and hold land as a corporation sole. For this purpose the Lands Clauses Acts (*t*) are incorporated, though the sanction of Parliament is required before compulsory acquisition is enforced. Three months' notice of intention has to be given to owners, lessees and occupiers concerned, and the Treasury must hold a local inquiry (*u*). A Bill must then be submitted to Parliament by the Treasury, three years after the passing of the Act being the period allowed for compulsory purchase. The assessment of compensation is provided for by the Acquisition of Land (Assessment of Compensation) Act, 1919 (*a*). By sect. 47 of the 1908 Act, power is given to the Postmaster-General to sell or exchange lands with the consent of the Treasury.

(As to the powers and duties of the Postmaster-General in regard to the transmission of telegraph messages, see title POSTAL, TELEGRAPH AND TELEPHONE SERVICES.) [857]

Establishment of Posts and Post Offices.—By sect. 34 of the Post Office Act, 1908 (*b*), the Postmaster-General may establish posts and post offices as he thinks expedient, and by sect. 89 of the same Act the expression "post office" includes any house, building, room, carriage or place used for the purpose of the post office, and any post office letter-box which, by the same section, includes any pillar-box, wall-box or other box or receptacle provided by the permission or under the authority of the Postmaster-General for the purpose of receiving postal packets. Sect. 84, therefore, provides the statutory authority for the erection of post office pillar-boxes on a public highway, which otherwise would be technical obstructions (see title OBSTACLES ON HIGHWAYS). In practice it appears that the actual site of these boxes is a matter for arrangement between the Postmaster-General and the local authority as highway authority. The expenses of the establishment of posts and post offices are paid out of moneys provided by

(*n*) See 25 Halsbury (2nd Edn.) 437.

(*o*) Post Office Act, 1908, ss. 82, 83; 18 Halsbury's Statutes 70.

(*p*) *Ibid.*, s. 16; 18 Halsbury's Statutes 44.

(*q*) I.e., a letter, postcard, reply postcard, newspaper, book packet, pattern or sample packet, or parcel, and every packet or article transmissible by post. A telegram is included, *ibid.*, s. 89.

(*r*) *Ibid.*, s. 18.

(*s*) 18 Halsbury's Statutes 55.

(*t*) 2 Halsbury's Statutes 1113 *et seq.*

(*u*) See title INQUIRIES.

(*a*) 2 Halsbury's Statutes 1176.

(*b*) 18 Halsbury's Statutes 51.

Parliament (c). As to post office letter-boxes on private places, see sect. 81 of the 1908 Act (d). Post office premises, it might be noted, are not liable to be rated (e).

Closing orders do not apply to the transaction after the closing hour of any post office business (f). There is no obligation to close on the weekly half-holiday, so far as post office business is concerned, where such is carried on in a shop as well as any other business, if such shop is a telegraph office (g). In such a case the shop may be exempted from the provisions as to half-holidays, hours of employment and meal times, if the Postmaster-General certifies that the exigencies of postal business necessitate this, but he must make the best arrangements that the exigencies allow to obtain conditions of employment not less favourable than those secured by the Act of 1912 (h). [858]

Contributions towards New Post Offices by Local Authorities.—Sect. 49 of the Act of 1908 as amended, and to some extent replaced, by provisions in the L.G.A., 1933 (i), empowers the council of any borough or urban district to contribute towards a new post office, by a grant of money or, with the consent of the M. of H., by the appropriation of land belonging to the council, or by the purchase of land for the purpose, where they consider that it would be beneficial that any new post office should be on a more expensive site, or of a larger size, or a more ornate building, or otherwise of a more expensive character than the Postmaster-General would otherwise provide. Similarly, they may undertake to pay to the Postmaster-General any loss he may sustain by reason of the establishment or maintenance of any post or telegraph office (k) or of any additional facilities.

Rural district councils, parish councils and meetings have similar powers, but a R.D.C. cannot impose a charge on a parish for facilities outside its boundaries unless the parish council or parish meeting, as the case may be, consent (l). [859]

Expenses. Boroughs and Urban Districts.—The expenses of borough councils in connection with the matters mentioned above are now payable out of the "general rate fund" of the borough (m) and in the case of urban district councils out of the "general rate fund" (n). [860]

Rural Districts.—By sect. 49 (5) of the Post Office Act, 1908, any expenses incurred by a R.D.C. under that section in respect of a contributory place or places are special expenses and are to be apportioned

(c) 1908 Act, s. 40; 13 Halsbury's Statutes 54.

(d) 13 Halsbury's Statutes 69.

(e) *Smith v. Birmingham Union* (1857), 7 E. & B. 483; 37 Digest 378, 80; see also *Mersey Docks v. Cameron, Jones v. Mersey Docks* (1865), 11 H. L. Cas. 443; 38 Digest 466, 236; but premises used as a sub-post office are (*Williams v. Neath Assessment Committee* (1935), 100 J. P. 71; Digest Supp.).

(f) Shops (Hours of Closing) Act, 1928, First Sched., 2; 8 Halsbury's Statutes 652.

(g) Shops Act, 1912, s. 12 (1) (a); 8 Halsbury's Statutes 621.

(h) *Ibid.*, s. 12 (1) (b).

(i) See L.G.A., 1933, ss. 185, 188, 190, 193 and 196; 26 Halsbury's Statutes 407 *et seq.*

(j) See title POSTAL, TELEGRAPH AND TELEPHONE SERVICES.

(l) Post Office Act, 1908, s. 40; 13 Halsbury's Statutes 57.

(m) See L.G.A., 1933, ss. 185—7; 26 Halsbury's Statutes 407, 408.

(n) See *ibid.*, s. 188.

between those places if more than one, and sects. 229—231 of the P.H.A., 1875 (o), are to apply. [861]

Parish Councils.—Expenses of a parish council in connection with matters contained in sect. 49 of the Post Office Act, 1908, are met in accordance with the provisions of sect. 198 of the L.G.A., 1933 (p), which section replaces the provisions of the L.G.A., 1894, dealing with the same matter. [862]

Borrowing Powers.—By sect. 49 (7) of the Post Office Act, 1908 (q), as amended by the L.G.A., 1933, the council of a borough or of an urban district may borrow for the purpose of contributing to the expense of a new post office, or when undertaking to pay any loss on extra postal facilities. Local authorities are authorised to borrow money, subject to the provisions of Part IX. of the L.G.A., 1933, by mortgage or by stock, with the consent of the M. of H., or by debentures or annuity certificates issued under the Local Loans Act, 1875 (r), as amended by any subsequent enactment (s). A debenture issued by a county council may be for any amount not less than £5 (t), but a parish council cannot borrow otherwise than by way of mortgage (u). As to security for borrowing, priority of securities, and general provisions relating to borrowing, stock and mortgages, including repayment of moneys borrowed on mortgage, see the L.G.A., 1933, Part IX. (a), and title **BORROWING**.

As to the application of sect. 49 of the Post Office Act, 1908, to the Isle of Man, see sub-sect. (11) of that section. The section does not apply to the Channel Islands. [863]

(o) See the R. & V.A., 1925, ss. 2, 3; 14 Halsbury's Statutes 618, 621; which repeal ss. 230, 231 of the 1875 Act.

(p) 26 Halsbury's Statutes 411.

(q) 13 Halsbury's Statutes 58.

(r) 12 Halsbury's Statutes 242.

(s) E.g. L.G.A., 1933, s. 196; 26 Halsbury's Statutes 413.

(t) *Ibid.*, s. 196 (2).

(u) *Ibid.*, s. 196 (1).

(a) Ss. 195—218; *ibid.*, 412 *et seq.*

POST-MORTEM EXAMINATIONS

See also titles: CORONERS;
MORTUARIES;
OFFICIAL BUILDINGS.

The council of any borough, urban or rural district, or parish may provide a proper place for the reception of dead bodies during the time required to conduct any post-mortem examination ordered by the coroner or other duly authorised authority, and may make bye-laws with respect to the management and charges for the use of such places (a).

(a) P.H.A., 1936, s. 198; 29 Halsbury's Statutes 458. This provision re-enacts the repealed provisions of s. 148 of the P.H.A., 1875; 13 Halsbury's Statutes 683,

The coroner may order the removal of a body for examination to or from a post-mortem room so provided within his jurisdiction. He may also order the removal of a body to a post-mortem room provided for the purpose outside his jurisdiction, if the authority which has provided the room consent, and he may authorise the burial of such body, after examination, outside his jurisdiction; otherwise he must order the return of the body to a place within his jurisdiction (b). [864]

The coroner may direct a medical witness to make a post-mortem examination (c) and if he refuses he may be fined (d). The coroner may also direct any legally qualified medical practitioner, or any other person in his opinion fitted to conduct the examination, to conduct a post-mortem (e), but if there is evidence that death was due to the neglect of the medical practitioner in attendance at the time of the death, then he is not permitted to conduct the examination (f). [865]

A majority of the coroner's jury, if not satisfied as to the cause of death, may request the coroner to direct a post-mortem examination or a further post-mortem examination, to be made by a medical practitioner named by them, and the coroner must comply with such a requisition or in default will be guilty of a misdemeanour (g).

A second inquest may be ordered if the court thinks that a post-mortem examination should have been made but was not made, unless it appears that a further examination would not further explain the cause of death (h). [866]

A coroner may order a post-mortem examination by a medical practitioner without an inquest if he thinks such post-mortem will render an inquest unnecessary. The report of such post-mortem examination must be made to the coroner in writing (i). The fee of a medical witness for making a post-mortem examination and a report thereon is two guineas. If he also attends the inquest this fee is not payable, but he is entitled to three guineas for the first day and one and a half guineas for each subsequent day (k). [867]

It has at times been asserted that the medical officer of a local authority's institution may not proceed to a post-mortem examination of the body of an inmate of the institution before receiving a formal certificate of the coroner that it is not proposed to hold an inquest. Sect. 23 of the Coroners (Amendment) Act, 1926, contemplates that a post-mortem examination may be made without the previous direction or request of the coroner, and, in the event of a death from natural causes, the medical officer of an institution may, with the consent of

omitting the restriction which prevented the provision of a post-mortem room at a workhouse or at a mortuary, and substituting a power to make bye-laws instead of regulations relating to management and charges. Model bye-laws (Series XV) were issued by the M. of H. in 1938.

(b) Coroners (Amendment) Act, 1926, s. 24; 3 Halsbury's Statutes 792.

(c) Coroners Act, 1887, s. 21; 3 Halsbury's Statutes 770; Act of 1926, s. 21; *ibid.*, 790.

(d) Coroners Act, 1887, s. 23; *ibid.*, 770.

(e) Act of 1926, s. 22 (1); *ibid.*, 791.

(f) *Ibid.*, s. 22 (4).

(g) Coroners Act, 1887, s. 21 (3); 3 Halsbury's Statutes 770.

(h) *R. v. Coulson* (1890), 55 J. P. 269; 13 Digest 245, 181.

(i) Coroners (Amendment) Act, 1926, s. 21; 3 Halsbury's Statutes 790.

(k) *Ibid.*, s. 23. Medical officers of public hospitals, infirmaries or other medical institutions are not, as formerly, disqualified from receiving fees for post-mortem examinations.

the relatives, proceed to a post-mortem examination without reference to the coroner (*l.*)

It is, or was, the practice in some institutions to obtain the consent of the relatives, on admission to the institution, to the holding of a post-mortem examination in the event of the patient's death, but such a course is manifestly apt to cause pain to the relatives (and alarm to the patient if it comes to his knowledge) and is decidedly not to be recommended. [868]

London.—By the P.H. (London) Act, 1936 (*m*), metropolitan borough councils may, and if required by the L.C.C. shall, provide buildings for post-mortem examinations, and may make regulations as to the management of such buildings. Such buildings may be provided in connection with a mortuary. Metropolitan borough councils may, with the approval of the L.C.C., unite or contract with one other, and with the consent of the Minister of Health may borrow for the purpose of providing such buildings. [869]

(*l.*) The Law Officers of the Crown gave an opinion to this effect in 1878, and subsequent legislation has not affected the position.

(*m*) 26 Geo. 5 & 1 Edw. 8, c. 50, ss. 236, 237.

POTATOES

See SEEDS.

POULTRY FARMS

See DERATING.

POUND, THE

See also title : CATTLE ON HIGHWAYS.

From early times it was customary in every village to have a place surrounded by fence or wall, closed by lock and key, where animals which were found straying or doing damage or had been distrainted for rent could be confined. Some of these remain and are of an architectural charm that justifies their preservation as an amenity of the village. Such places were called "the pound" and the animals put in them were "impounded." Private pounds were also made where cattle found straying or doing damage on a man's property were put but in such a case they were not in the custody of the law as described

below. Early Acts refer to the "village pound" or the "common pound" and to the "pound-keeper," chiefly in relation to distraint, and in a statute of 1554 (*a*) it was enacted that no cattle were to be taken to a pound more than three miles from the place where they were taken as distress. In *Coaker v. Willcocks* (*b*), however, it was decided in 1911 that the pound might be more than three miles distant if it were in the same hundred. Authorities were given power by the Town Police Clauses Act, 1847 (*c*), to purchase land for the purpose of a pound for stray animals and to erect the pound and keep it in repair. Sect. 24 of the same Act mentions the pound or other place appointed by the local authority (then Commissioners) and it is therefore to be deduced that where there is no pound, any other suitable place may be used.

[870]

The law as to straying cattle is contained in sect. 25 of the Highway Act, 1864, sect. 75 of the Highway Act, 1885 (*d*), and sects. 24, 25 and 26 of the Town Police Clauses Act, 1847 (*e*). By these Acts the owners are liable to a penalty and must pay the expenses of the removal of the animal to the pound and the cost of keeping it there. If the penalty and expenses are not paid within three days the pound-keeper or other person in charge may sell the animal and must pay the sum obtained to the owner, if known, less the penalty and expenses and the cost of the sale. Persons releasing or attempting to release the cattle, or destroying the pound or any part of it, are also liable to be fined or imprisoned.

The law relating to animals found doing damage or restrained for rent is contained in an early Act of unknown date (*f*), where power to impound is given and by sect. 2 of the Distress Act, 1689 (*g*), where the right is given to sell the animals impounded in order to obtain the expenses of impounding them. By sect. 3 of this Act, any person suffering damage by pound breach or the rescue of the cattle might bring a civil action and obtain treble damages for any harm done. By sect. 1 of the Pound-breach Act, 1848 (*h*), persons releasing or attempting to release the animals were made liable also to fine or imprisonment, and the whole or a portion of the fine might be awarded to cover the damage. [871]

The treatment of animals in pounds is now dealt with in sect. 7 of the Protection of Animals Act, 1911 (*i*). Persons impounding animals are responsible for providing them with suitable food and drink, or they may be fined five pounds. Any person, also, who sees an animal without food or drink for six successive hours or longer may enter the pound and supply it and the cost can be recovered as a civil debt from the owner of the animal. The person taking the animal to the pound, and not the pound-keeper, is liable to the penalty (*k*).

[872]

(*a*) The Impounding of Distress Act, 1554; 5 Halsbury's Statutes 139.

(*b*) [1911] 2 K. B. 124; 18 Digest 841, 758.

(*c*) S. 27; 19 Halsbury's Statutes 38.

(*d*) 9 Halsbury's Statutes 149 and 90. See title CATTLE ON HIGHWAYS, Vol. II., p. 461, and the definition of cattle on p. 460.

(*e*) 19 Halsbury's Statutes 37.

(*f*) Statutes of the Exchequer; 5 Halsbury's Statutes 138, 139.

(*g*) *Ibid.*, 141.

(*h*) *Ibid.*, 156.

(*i*) Halsbury's Statutes 377.

(*k*) *Dargan v. Davies* (1877), 2 Q. B. D. 118; 18 Digest 446, 1326, decided under an earlier Act.

London.—By virtue of the Metropolitan Paving Act, 1817, sect. 109 (*l*), metropolitan borough councils may provide places for the safe custody of animals found straying or which may be lawfully impounded. [873]

(*l*) 11 Halsbury's Statutes 873.

POWERS

See ULTRA VIRES.

POWERS OF OFFICERS

See DUTIES AND POWERS OF OFFICERS.

PRECAUTIONS, AIR-RAID

INTRODUCTORY	PAGE	Powers and Duties of the Secretary of State	PAGE
Air-Raid General Precaution Schemes	328	ADMISTRATION OF THE ACT	334
Air-Raid Fire Precaution Schemes	329	Regional Inspectors	335
POWERS AND DUTIES OF LOCAL AUTHORITIES	331	Base Hospitals	335
County Councils	331	Anti-Gas Training (Medical Instructions)	335
County Borough Councils	331	Civilian Anti-Gas Training	336
Borough and Urban District Councils	331	Anti-Gas Protection of Houses	337
Rural District Councils	331	First-Aid Posts	338
		LONDON	338
			338

INTRODUCTORY

The object of the Air-Raid Precautions Act, 1937, is to secure that precautions shall be taken to protect persons and property against injury or damage in a hostile attack from the air. It gives powers to and imposes duties upon the local authorities to prepare, and the Home Secretary to approve, air-raid precaution schemes of two kinds, namely, general precaution schemes and fire precaution schemes (sect. 1). [874]

Air-Raid General Precaution Schemes must under the Air-Raid Precautions (General Schemes) Regulations, 1938, contain provisions regarding the following matters :

- (1) The giving of instruction and advice to the public as to air-raid precautions.
- (2) Arrangements for receiving information with respect to impending air-raids, and for giving air-raid warnings.
- (3) Arrangements for the collection and necessary distribution of information and reports of air-raid casualties and damage and for the recording of such reports.
- (4) The organisation of services of air-raid wardens.
- (5) Arrangements for dealing with casualties, including the organisation of first-aid parties, first-aid posts, casualty clearing stations and ambulance services.
- (6) Arrangements for the clearance of debris from highways, streets and public places and for dealing with damaged or unsafe buildings and rescue of persons trapped therein.
- (7) Arrangements for detection of poison gas.
- (8) Arrangements for the decontamination of highways, streets, public places and buildings affected by poison gas and anything therein requiring decontamination.
- (9) Arrangements for the repair of highways, streets, public places and sewers and for co-ordination between the authorities responsible for such repairs and public utility undertakings.
- (10) The recruiting and training of personnel.
- (11) Arrangements for the protection of such premises as it will be essential to occupy and use in time of war for the maintenance of air-raid precaution services.
- (12) Arrangements for the provision of shelters for the protection of the public.
- (13) Arrangements for or in connection with the restriction and regulation of lighting in highways, streets and public places.
- (14) Arrangements for the distribution of respirators to the public.
- (15) The storage and maintenance of equipment, appliances and material.
- (16) Arrangements in connection with any transfer of the civil population.
- (17) Arrangements for the central control and co-ordination in time of war of air-raid general precaution services. [875]

A memorandum (701262/S) and Model Scheme were issued by the Department on March 28, 1938.

Air-Raid Fire Precaution Schemes are, under the Air-Raid Precautions (Fire Schemes) Regulations, 1938, to contain provisions regarding the following matters :

- (1) The organisation of an emergency fire brigade service, including such provision as is necessary for auxiliary fire stations, fire patrols and fire posts.
- (2) The selection of auxiliary fire stations.
- (3) Arrangements for making use of natural and static supplies of water for fire fighting.
- (4) The storage and maintenance of appliances, equipment and material.
- (5) The recruiting and training of auxiliary firemen and other personnel.
- (6) Arrangements for securing the use of such vehicles as are required. [876]

The division of powers and duties between the Home Secretary and the local authority is set out below.

POWERS AND DUTIES OF THE SECRETARY OF STATE

The Home Secretary is empowered to prescribe by regulations the matters to be included in an air-raid precautions scheme, but he may in the case of any council dispense with the preparation and submission of a scheme upon any matter specified in such regulations, as it is recognised that the scale of preparations must vary in different parts

of the country according to vulnerability; and there may be air-raid precaution services in a densely populated urban area which are not required in a sparsely populated rural area (sect. 1 (4)).

The Home Secretary may require any council by whom schemes are to be submitted to prepare and submit separate schemes in respect of any particular matter and, in the case of a county council, separate schemes in respect of different parts of their area (sect. 1 (5)).

The Home Secretary may, on the application of a borough or U.D.C. and after consultation with the county council, direct the local authority applying to submit a general precautions scheme instead of the county council (sect. 1 (2), proviso (b)).

The Home Secretary may approve or amend any air-raid precautions scheme submitted to him and such scheme shall then come into force. Any scheme may be amended by a subsequent scheme which must be approved or amended in the same way as the original one. The Home Secretary may require a council to prepare and submit an amended scheme (sect. 3 (1) and (3)).

Joint committees of local authorities shall not be appointed for the purposes of this Act under sect. 91 of the L.G.A., 1933, nor shall functions under this Act or any scheme be delegated under sect. 274 of that Act except with the approval of the Home Secretary (sect. 4 (1)).

He may, after consultation with the councils concerned, by order direct that the functions of any two or more councils in preparing schemes and in carrying out functions under schemes be exercised by a joint committee appointed under sect. 91 of the L.G.A., 1933 (sect. 4 (2)).

Any local authority compulsorily purchasing land under the L.G.A., 1933, for the purposes of air-raid precautions must obtain the confirmation of the Home Secretary (sect. 5).

The Home Secretary may demand any information required in order to assist H.M. Government in the preparation of plans for any necessary transference of the civil population in the event of an air attack (sect. 6).

The Home Secretary shall make grants to the local authorities in respect of approved expenditure in accordance with the provisions of the Schedule to the Act. He shall determine, with the concurrence of the Treasury, the time, manner and conditions, including accounts, certificates and audit, of the payment of such grants (sect. 8).

He shall, when necessary, with the consent of the Treasury, incur expenses in the general superintendence and direction of measures taken under the Act in providing services and training of persons and in acquiring equipment, appliances, and other material (sect. 9).

He may, with the concurrence of the Treasury, make regulations to provide:

- (a) for the storage of equipment, appliances or material;
- (b) as to loans, gifts and sales of such equipment, etc.;
- (c) as to matters to be dealt with in air-raid precautions schemes;
- (d) as to the approval of the expenditure by councils in connection with approved schemes and for the purpose of making provision for the protection of persons and property otherwise than by a scheme.

He may permit by regulation the approval of any expenditure incurred after December 31, 1936 (sect. 11 (1)).

He may amend or annul any order by a subsequent one (sect. 11 (2)).

He must lay all regulations and orders before Parliament as soon as possible after they have been made. Parliament may, within twenty-eight days, annul such regulation or order, but anything previously done thereunder shall be valid, and he may make a new regulation or order (sect. 11 (3)).

The Home Secretary must within three years conduct an investigation, in consultation with associations of local authorities, with any local authority with whom consultation appears desirable, into the working of the financial provisions, particularly regarding the expense borne by the local rates. He must lay a report of this investigation before Parliament (sect. 10). [877]

POWERS AND DUTIES OF LOCAL AUTHORITIES

A local authority is defined as any authority having power to levy a rate under the R. & V.A., 1925, or for whose expenses a precept may be issued for the levying of a rate, and any combination or joint committee of any such authorities (sect. 12). [877A]

County Councils.—A county council shall, before preparing a general air raid precautions scheme, consult with the borough, urban district and rural district councils within its area that will be affected by the scheme (sect. 1 (2), proviso (a)). Councils of county districts have a duty to assist the county council in the preparation of a scheme.

These schemes must be submitted as soon as possible to the Home Secretary, but in order that preparations may not be held up while a complete scheme for a whole area is drawn up, councils may submit separate schemes both for the various parts of their area and for different services. The councils shall prepare such separate schemes if required by the Home Secretary (sect. 1 (3)).

A council may, by arrangement with any other council, provide in its scheme for duties being carried out by another scheme-submitting council (sect. 1 (6)). [878]

County Borough Councils are to prepare and submit general precautions schemes as in the case of county councils. They are to prepare and submit fire precautions schemes for their whole area. [879]

Borough and Urban District Councils shall prepare and submit fire precautions schemes for their whole area. A borough or U.D.C. may apply to the Home Secretary for permission to prepare and submit a general precautions scheme. The Home Secretary may, after consultation with the county councils, grant such permission, subject to any conditions which he may impose. The scheme shall then be prepared and submitted by the borough or U.D.C. instead of by the county council (sect. 1 (2), proviso (b)). [880]

Rural District Councils.—The general precautions schemes will usually be prepared by the county council, but rural districts may prepare their own schemes which will be co-ordinated by the county council. Rural district councils, which are not at present empowered to maintain fire brigades unless invested with urban powers by order of the M. of H. may include in their fire precautions schemes provisions to enable the council to maintain a fire brigade or to exercise such other functions as to the extinguishment of fires as may be necessary for giving effect to the scheme. [881]

Compulsory Purchase of Land.—The council of any county, county borough, borough, urban district or rural district may make an order for the compulsory purchase of land. Such order has to be confirmed by the Home Secretary. Sects. 161, 162, 174 and 175, and paragraphs (a) and (c) of sect. 179 of the L.G.A., 1933, shall apply to the order for the compulsory purchase of land; the Home Secretary being substituted for the references to the M. of H. and council being substituted for the references to local authority (sect. 5). [882]

Evacuation of Civil Population.—All local authorities must give any information demanded by the Home Secretary in order to assist the preparation by the Government of plans for any necessary transference of the civil population in the event of hostile attack from the air (sect. 6). [883]

Co-operation of Local Authorities.—It is the duty of all local authorities charged with functions under the Act to assist each other where possible in making preparations for the protection of persons and property from injury or damage in the event of hostile attack from the air, and any two or more such authorities may enter into mutual arrangements for this purpose. The extensive provisions contained in sects. 91 and 274 of the L.G.A., 1933, for the combination of local authorities, appointment of joint committees and the delegation of functions to subordinate authorities are not to be exercised without the approval of the Home Secretary (sect. 4). See paragraphs 13, 14 and 15 of the Home Office Memorandum No. 701074/5, January 28, 1938. [884]

Approved Schemes.—All schemes must be approved, with or without modification, by the Secretary of State and shall come into force on the date stated in the approved scheme (sect. 3 (1)).

A model form of Air-Raid Precautions General Scheme and a form of estimate of cost were issued by the Air-Raid Precautions Department on March 28, 1938, together with a circular (No. 701074/5) on the preparation of schemes. Fire Precautions Schemes should be submitted in Form E.F.B.1, issued with the circular of March 24, 1938, to the H.O. (Fire Brigades Division).

Alterations in a scheme may be made by the submission of a new scheme to be approved in the same way as the original scheme. The Home Secretary may require a council to prepare and submit an amending scheme in accordance with his directions (sect. 3 (3)).

It is the duty of a local authority to discharge the functions of the Act on or under any scheme in force for its area (sect. 3 (2)).

Whilst the Act imposes on local authorities the duty of discharging prescribed functions, there is no penal clause for defaulting authorities nor can the Home Secretary on behalf of the Government take over the duties and responsibilities of the defaulting local authority. [885]

Financial Provisions.—A county council in submitting an air-raid precaution scheme may define that all or what portion of the expenditure is to be dealt with as expenditure for special county purposes (sect. 1 (7)).

Local authorities may incur expenditure on air-raid precautions whether or not such expenditure is incurred as the result of an air-raid precautions scheme (sect. 7 (1)).

On July 9, 1935, the H.O. issued a circular letter to local authorities

on air-raid precautions. The Act legalises retrospective expenditure to that date (sect. 7 (2)).

The Home Secretary shall pay grants towards approved expenditure incurred by a county council and a county borough council and a county district in respect of air-raid precautions. Paragraph 1 of the Schedule to the Act gives the basis for the calculation of the grants. The standard rate of grant varies from 60 per cent. to 75 per cent. of the approved expenditure. The varying percentages to be paid are fixed according to the ratio of the weighted population to the estimated population.

Weighted population and estimated population are to be calculated as at the commencement of the Act in accordance with the L.G.A., 1929, for the purpose of the apportionment of the general Exchequer contribution (see title GENERAL EXCHEQUER GRANTS, Vol. VI., p. 202).

[886]

In the cases of a county council and county borough council, where the weighted population bears to the estimated population a proportion not exceeding 1·5 to one then the Secretary of State shall pay 60 per cent. of the approved expenditure on air-raid precautions. Where the said proportion exceeds 1·5 but does not exceed 2·5, 65 per cent.; where it exceeds 2·5 but does not exceed 4·0, 70 per cent.; exceeding 4·0, 75 per cent.

The grants to be paid to a county district shall be an amount equal to the same percentage of the approved expenditure of the county district as is payable, under the above calculation, to the county council in which the county district is situated.

Where the difference between the approved expenditure incurred by a county council, county borough or county district, and the grant payable by the Home Secretary amounts to a sum in excess of the produce of a rate of one penny in the pound levied in the area or district, then the grant shall be increased.

Where the standard rates are 60 per cent. and 65 per cent. an extra grant of 75 per cent. of the amount in excess of a penny rate will be paid by the Home Secretary. Where the standard rates are 70 per cent. and 75 per cent. the extra grant will be 85 per cent. of the amount in excess of a penny rate. [887]

The produce of a rate of one penny in the pound for any period means the amount actually realised during that period by the collection of rates within the area.

The produce of a rate of one penny in the pound means that portion of the produce of a rate which one penny bears to the total amount in the pound of the rate.

In any area where two or more parts are differentially rated the amount of the produce of a rate of one penny in the pound shall be separately ascertained in respect of each part and the sum of these two or more amounts shall be the produce of a rate of one penny in the pound for the whole area.

The grants payable by the Home Secretary to local authorities towards approved expenditure on air-raid precautions shall be paid at such times and in such manner and subject to such conditions as to accounts, certificates and audit, as may be determined by him with the concurrence of the Treasury (sect. 8 (2)). [888]

The following expenses and grants shall be payable out of moneys provided by Parliament :

(1) Expenses incurred by the Home Secretary in the general

superintendence and direction of measures taken under the Act. Before incurring such expenses the Home Secretary must obtain the consent of the Treasury.

(2) Provision by the Home Secretary of such services and training of such persons and acquisition on behalf of His Majesty of such equipment, appliances and other material as he considers it necessary to furnish for the purpose of affording protection to persons and property from injury or damage in the event of hostile attack from the air.

(3) Payment to local authorities of grants payable in accordance with the Schedule of the Act (sect. 9).

Expenditure incurred any time after December 31, 1936 :

(1) For the storage of equipment, appliances or materials acquired by the Home Secretary.

(2) As to loans, gifts and sales of such equipment, appliances or material.

(3) For the matters as to which provision is to be made by air-raid general precautions schemes and air-raid fire precautions schemes.

(4) Approved expenditure of local authorities incurred for the purposes of air-raid precautions schemes, or incurred, with the concurrence of the Home Secretary, for the purpose of making provision otherwise than in pursuance of an air-raid precautions scheme for the protection of persons and property from injury or damage in the event of hostile attack from the air, may be approved and permitted by regulations of the Home Secretary with the concurrence of the Treasury (sect. 11 (1)).

Within three years of the passing of the Act the Home Secretary must conduct an investigation into the working of its financial provisions, with particular reference to expense falling to be borne by the local rates.

He may, where it appears to him desirable, consult with such associations of local authorities as appear to him to be concerned and with any local authority with whom consultation appears to him to be desirable.

The Home Secretary must lay a report of the result of his investigations before Parliament (sect. 10). [889]

ADMINISTRATION OF THE ACT

Whilst the above is an account of the Air-Raid Precautions Act, 1937, the administration of the Act will be carried out not only under the regulations issued by the Home Secretary in accordance with the terms of the Act, but also by instructions and guidance issued by him to local authorities. A large number of instructions have already been issued, not only since the passing of the Act, but before it was even introduced into the House of Commons; and it was owing to these pre-Act instructions and the fact that many local authorities and the Home Secretary himself had acted on these instructions and thereby incurred expenditure, that the Act made the approval and payment of grants towards expenditure retrospective.

Handbooks have been issued by the Home Secretary for the guidance of local authorities and their air-raid precautions officers and air wardens upon such matters as Anti-Gas Training, Anti-Gas Protection of Houses, First Aid Posts, De-Contamination, Lighting Restrictions, etc. These handbooks will shortly be consolidated into one handbook for the guidance of those concerned. [890]

Regional Inspectors.—In order to facilitate contact between the Air-Raid Precautions Department and local authorities a system of regional inspectors has been established with offices in many provincial towns. These towns include Birmingham, Edinburgh, Leeds, Liverpool, Newcastle-on-Tyne, Nottingham, Reading, Bristol, Cardiff, Cambridge and Glasgow. Further offices will be opened from time to time in other towns and local authorities will be notified. The assistance and advice of these regional inspectors will be freely available to local authorities. [891]

Base Hospitals.—As the service of base hospitals cannot be organised on a local basis, local authorities have been asked not to make any provision for such in their schemes. The Government have therefore decided to work out a scheme centrally. [892]

Anti-Gas Training (Medical Instructions).—A scheme of anti-gas instruction for medical, dental and veterinary practitioners, students and nurses was inaugurated in December, 1936. For the purposes of this scheme fifteen qualified medical practitioners have been appointed and trained at the Civilian Anti-Gas School for the sole purpose of giving instruction to the medical, dental, veterinary and nursing professions. These instructors are stationed at Liverpool, Newcastle-on-Tyne, Shrewsbury, Leeds, Birmingham, York, Cardiff, Nottingham, Salisbury, Cambridge and London and will give courses of instruction to members of these professions in those towns and in the surrounding area. They will work directly under the Air-Raid Precautions Department of the H.O., and their services will be available without charge.

Arrangements have been made with the British Medical Association for the branches of that association to organise local courses for private practitioners. These courses will not be limited to members of the association. Arrangements have also been made with the deans of medical schools with regard to instruction, where such instruction is not already being given by a member of the staff. The college of nursing is collaborating with regard to the training of nurses.

This scheme for medical training will not impose any burden on local authorities either financially or in the matter of organisation.

The instructors and the necessary equipment are provided by the Air-Raid Precautions Department of the H.O. without charge. A small cost may have to be met locally for the expense (if any) of the accommodation of the local course and minor office expenses of organisation. In order to cover such incidental expenses it is suggested that a small enrolment fee should be charged to those who attend the courses. In order to keep this fee as low as possible the Secretary of State suggests that, where free accommodation is not available in a hospital or similar premises, the local authority in the area should assist in providing accommodation in some public building.

The Home Secretary also suggests that the local authority's M.O.H. should keep in touch with the local branch or branches of the British Medical Association in his area, so as to keep himself acquainted with the progress of medical training in his locality, as well as to give any assistance which it may be in his power to afford.

The importance of securing that practising members of the medical profession are conversant with anti-gas measures is obvious, not only from the point of view of ensuring skilled treatment of gas casualties, but also from that of the moral effect by enabling members of the public

to look upon their medical advisers as qualified to assist and advise in case of need. [893]

Civilian Anti-Gas Training.—Two civilian anti-gas schools exist at Falfeld and The Hawkhills, Easingwold, near York. These schools have been formed and are financed by the Government for the purpose of training instructors. The training given to instructors at these schools includes the fullest possible help and guidance in the details of running local courses, including methods of preparing simple diagrams and improvising exhibits for illustrating diagrams. The schools are residential. Before their official opening 150 police and fire brigade officers from all parts of Great Britain had been trained and qualified as first-class instructors.

The instructors then return to their own localities to train the civilian population in accordance with a syllabus of instruction issued by the Air-Raid Precautions Department of the H.O.

It is suggested that local authorities should make arrangements for the training of their own employees at the local centres in working hours. The local courses of instruction should not normally include more than twenty persons in one group, and each course is planned to occupy about twenty-two to twenty-four hours of instruction, in periods of about an hour, practical work (both indoors and out of doors) being interspersed with theoretical instruction.

The normal syllabus of training includes wearing a respirator in an atmosphere charged with tear gas. Existing gas chambers can be used, but where such do not exist arrangements are made for mobile gas chambers (motor vans of which the bodies have been specially designed to form a gas chamber) to be supplied by the H.O. and operated on its behalf by selected chief officers of police. No charge will be made for the use of these vans for duly authorised training purposes.

The local authority will only have to provide a few inexpensive items, such as the storage of the equipment, as the major part of the equipment required will be provided by the H.O. without charge.

The question of the risk to students and the payment of compensation in case of accident arose and the H.O. pointed out that as a student, before being admitted to a course of instruction, had to provide a medical certificate as to his physical fitness, the potential risk from the use of dangerous gases and the wearing of protective clothing was largely discounted. As the possibility of sustaining injury or disability could not be entirely eliminated, the Secretary of State made certain offers of compensation.

If an officer or servant of a local authority or other nominating employer, while attending the school as a student, receives without his own default an injury due to gas poisoning or the wearing of protective clothing, the Secretary of State will indemnify the local authority or employer against any claim for compensation in respect of the injury for which the local authority or employer might be legally liable under the Workmen's Compensation Act, provided that it is not covered by insurance.

If an injury occurs in circumstances in which the local authority or employer is not liable to pay a claim for workmen's compensation or to a student who is not attending the school in the course of his employment, provided the injury is not due to the student's own fault, the Secretary of State is prepared to consider the payment of an *ex gratia* grant on the merits of the case. The Home Secretary has no

statutory authority to provide funds for compensation on a definite scale, but it is his intention in considering the payment of grants to have regard to the amount of the compensation which would be payable to a Government employee with the same salary and service injured in like circumstances, and to any discretionary payment which may be made by the local authority or employer.

The Home Secretary is also prepared to consider the refund of any sick pay issued in respect of the injury by the local authority or employer.

Where a whole-time fireman or a whole-time police fireman is injured the Home Secretary is prepared to consider making a grant to the local authority concerned on the merits of the case in respect of any increased pension liability incurred by the local authority.

Where a police officer is injured no addition to the ordinary police grant will be made in respect of such an injury.

Any claim against a local authority or employer in respect of any injury under the above arrangements should be reported at once to the Air-Raid Precautions Department and should not be settled without communicating with the Home Secretary. [894]

Anti-Gas Protection of Houses.—Handbook No. 1, issued by the Air-Raid Precautions Department of the H.O., describes the steps which the public are advised to take in order to protect themselves against the effects of any chemical warfare gases which might be employed by enemy aircraft in time of war.

The gist of these recommendations is : first, to go indoors ; secondly, to arrange for the room into which you go to be made as gas-proof as possible ; thirdly, to take with you the respirator which will have been issued to you. The handbook does not claim that any one of these steps by itself will make an individual completely safe. Certain experiments have been conducted by the Chemical Defence Research Department under the aegis of a special sub-committee of the Chemical Defence Committee. That sub-committee was composed of eminent experts, not in Government employment, and included a number of distinguished university professors and scientists.

The report of these experiments has been issued by the H.O. and goes to show that the civilian respirator allowed the wearer to remain for several minutes in the densest clouds of chlorine gas, tear gas, mustard gas and arsenical smoke, thus enabling him to reach a place of safety even if he should for a time be exposed to the most dangerous situation—for example, if he is caught out of doors in a gas cloud, or if his gas-protected room becomes damaged and he is compelled to seek shelter elsewhere.

In an unprotected room, that is a room with merely the doors and windows closed, chlorine gas only penetrated slowly, and it was not until after about seven minutes that it became necessary for a respirator to be donned. Most of the penetration was through the cracks in the floor boards, so that if the floor had been either a solid one or covered with a carpet or linoleum, the period of grace would have been longer. Where the room had been protected in accordance with the official instructions, animals which had been placed in the room were unaffected after the lapse of an hour.

Animals placed in an unprotected room enveloped in a cloud of mustard gas remained there for a period of over twenty hours. In the case of a protected room subject to a similar experiment with mustard gas, spray and vapour, the animals placed therein were removed

at the end of twenty hours and they showed no evidence of the effect of the gas at all. The amount of mustard gas penetrating into the room was also measured by chemical methods and it was found that the amount of gas inside the room was so small that a man could have remained there for the whole twenty hours without it being necessary for him to wear a respirator and without any subsequent ill-effects.

The third type of gas used was tear gas. Men who occupied rooms in the house which had received no treatment beyond the closing of the windows and doors found no need to put on their respirators for the first thirteen minutes. In the protected rooms the men found that they were able to remain there for hours without its being necessary for them to put on their respirators.

Arsenical smoke seems to have a greater penetrating power and in the case of the unprotected room the respirators had to be worn, but in the case of the protected room the occupants found that arsenical smoke penetrated the room to an extent which caused some irritation of the nose and throat and eventually rendered the wearing of respirators desirable to ensure comfort.

From this series of experiments it will be seen that treating a room in accordance with the recommendations of the Air-Raid Precautions Department does reduce very considerably the amount of gas penetrating into a room, and that a room so treated is correspondingly safer than a room which has received no such treatment.

In the experiments with mustard gas and tear gas, the amount of gas which was able to penetrate into the gas-protected room was so small that no further measures of protection were necessary. [895]

First-Aid Posts.—The lay-out, equipment and staffing of First-Aid Posts is described in Handbook No. 2. First-Aid Posts are only intended to deal with light cases of injury, and therefore the staff will not include qualified medical practitioners, as these will be required either in their practices or in hospitals.

Light cases are usually those which are fit and able to walk, although some cases which are unable to walk will not be serious cases. Simple fractures, sprains, flesh wounds or burns, whether contaminated or not, are light cases and to be treated at first-aid posts. On the other hand, serious cases of injury, whether or not accompanied by gas contamination, and cases of lung irritant gas poisoning (where any exertion is undesirable) are to be taken direct to casualty clearing hospitals and not to be passed through a first-aid post.

It is therefore essential for all members of first-aid parties to be fully trained in first aid, as well as in anti-gas measures.

Air-Raid Precautions Memorandum No. 7 summarises the main personnel requirements of a local authority in connection with schemes. [896]

LONDON

As the L.C.C. is the fire brigade authority for both the County of London and the City of London, the air-raid fire precautions schemes shall be prepared by it and submitted for approval or modification to the Home Secretary.

The council shall prepare a general precautions scheme to cover some of the services required. Which those services are shall be defined by an order to be made by the Home Secretary (sect. 2).

The Act provides that the Home Secretary shall make an order allocating the duty of preparing and submitting a general precautions scheme, as between the L.C.C., the Common Council of the City of London and the metropolitan borough councils. This order will state which of the councils are to perform the various services required (sect. 2).

Local authorities possess powers under the L.G.A., 1933, to borrow money to defray the expenses of air-raid precautions. The Act extends the powers of borrowing, for the purposes of the Act, to the metropolitan borough councils in accordance with the provisions of the Metropolis Management Acts, 1855 to 1893, as amended by the L.G.A., 1899, subject to the modification that the Minister of Health, instead of the L.C.C., shall be the authority to sanction the borrowing of money, except for the purchase of land used or intended to be used partly for purposes for which money has been or may be borrowed with the consent of the L.C.C. under some other Act (sect. 7 (3)).

[897]

The grants payable to the Common Council of the City of London and the metropolitan borough councils are also calculated upon the ratio of the weighted population to the estimated population, but the proportions between these two figures are slightly different from those in the case of the county councils and the county borough councils. Where the weighted population bears to the estimated population a ratio not exceeding 1·25 to one then a grant of 60 per cent. of the approved expenditure on air-raid precautions will be paid by the Home Secretary. Where the said proportion exceeds 1·25 but does not exceed 1·5, 65 per cent.; where it exceeds 1·5 but does not exceed 1·75, 70 per cent.; where it exceeds 1·75, 75 per cent.

Where the approved expenditure on air-raid precautions in the City of London or any metropolitan boroughs, including expenditure by the L.C.C. raised by precept on the council concerned, reaches an amount which, after payment of the grant at the standard rate, involves the raising of a penny rate, then any expenditure beyond this amount will earn a grant at a higher rate, upon exactly the same basis as in the case of the county councils, county boroughs and county districts (sect. 8 (1)).

[898]

PRECEDENCE

See CEREMONIES.

PRECEPTS

PAGE		PAGE	
DEFINITION AND PURPOSE -	340	PRECEPTS OF OTHER AUTHORITIES	345
PRECIPITATING AUTHORITIES -	341	Parish Councils and Parish Meet-	345
GENERAL PROVISIONS -	341	ings - - - - -	345
PRECEPTS OF COUNTY COUNCILS	342	Assessment Committees - - -	346
Powers - - - - -	342	Catchment Boards - - -	346
Basis - - - - -	342	Joint Boards - - -	346
Issue - - - - -	342	Railway Assessment Authority	346
Form - - - - -	343	ENFORCEMENT OF PRECEPTS	346
Amount Due under Precept -	345	LONDON - - - - -	347
Interest on Overdue Payments -	345		

See also titles :

ASSESSMENT COMMITTEES ;
 CATCHMENT BOARDS ;
 COUNTY ACCOUNTS ;
 COUNTY COUNCIL ;
 JOINT BOARDS AND COMMITTEES ;
 METROPOLITAN POLICE ;
 METROPOLITAN WATER BOARD ;

PARISH COUNCIL ;
 PARISH MEETINGS ;
 PENNY RATE ;
 PORT HEALTH AUTHORITIES ;
 RAILWAYS, RATING OF ;
 RATE ACCOUNTS .

Definition and Purpose.—A precept is an order made in pursuance of statutory powers issued by a spending local authority and addressed to a rating authority (a), requiring that rating authority to pay a contribution towards the expenses of the precepting authority and to levy sufficient rates to meet such contribution. Local authorities which are constituted with independent financial powers but without powers to levy rates themselves are generally empowered to obtain funds for the purpose of meeting their expenses by issuing precepts to the rating authorities in their respective administrative areas. It may happen that a rating authority is served with precepts by one, two, or in some cases five or more different precepting authorities. The employment of the rating authorities as conduits for the transmission of external demands which are merged in the rate which they levy themselves thus relieves the ratepayer from the embarrassment of a multiplicity of charges, and, although not directly reducing the total of the charges, it is economical in that it avoids the setting up of duplicate collection organisations. On the other hand, the absence of a direct "financial nexus" between the ratepayer and the precepting authority may contribute to the lack of interest which the ratepayer shows in the election of such of the precepting authorities, e.g. county councils, as are popularly constituted. A prudent rating authority levying low rates for their own purposes may undeservedly be blamed on account of the high total rate levied in order to meet the demands of an extravagant precepting authority, for there is no appeal against a precept served in pursuance of a statutory enactment. [899]

(a) The council of every county borough and the council of every urban and rural district are created rating authorities for their respective areas by the R. & V.A., 1925, s. 1; 14 Halsbury's Statutes 617.

Precepting Authorities.—Of the six general types of local authority—councils of counties, county boroughs, non-county boroughs, urban districts, rural districts and parishes—county councils and parish councils are precepting authorities. Precepts may also be issued on behalf of a parish meeting where there is no parish council. Other local authorities having power to issue precepts are in the main *ad hoc* bodies, viz. assessment committees; burial boards; catchment boards; isolation hospital committees; joint boards constituted under the P.H.A. for the purposes of water supply, sewerage, or any other purposes of the Acts, e.g. joint hospital boards; joint tuberculosis boards; the metropolitan water board; port health authorities; the receiver of the metropolitan police district; the railway assessment authority.

Various other joint bodies constituted without independent financial powers, although having in some cases powers under the orders appointing them to serve "contribution orders" (e.g. JOINT VAGRANCY COMMITTEE, see Vol. VII., p. 389) on the constituent local authorities, are not precepting authorities, and their expenses are defrayed in such proportions as the councils by whom they are appointed may agree (see title JOINT BOARDS AND COMMITTEES, Vol. VII., p. 376). [900]

General Provisions.—Every local authority which has power to issue a precept to a rating authority (b) is required by sect. 12 of the R. & V.A., 1925 (c), to issue such precepts as will be sufficient to provide for such part of the total estimated expenditure to be incurred by the authority during the period in respect of which the precept is issued as is to be met out of moneys raised by rates, including sums payable to any other authority under precepts, together with such additional amount as is in the opinion of the authority required to cover expenditure previously incurred, or to meet contingencies, or to defray any expenditure which may fall to be defrayed before the date on which the moneys to be received in respect of the next subsequent precept will become available. Any loss by way of interest charged or lost from failure through wilful neglect or wilful default to issue precepts of sufficient amount may be surcharged by a district auditor under sect. 228 of the L.G.A., 1928 (d). Precepts which were, before April 1, 1927, required to be sent to overseers, must now be sent to the rating authority (e), and every authority issuing a precept must supply to the rating authority such information as is reasonably necessary for the preparation of demand notes in accordance with sect. 7 of the Act (f). [901]

A code of rules governing the issue and payment of precepts of county councils is prescribed by sect. 9 of the R. & V.A., 1925; and this code may be applied, with any necessary modifications, to precepts issued by any other authority, on application to the M. of H. by that authority or by any rating authority to whom its precepts are issued (g).

The foregoing provisions do not apply to precepts of the L.C.C., the Metropolitan Water Board or the Receiver of the Metropolitan

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- (b) "Local authority" means any body having power to levy a rate, or to issue a precept to a rating authority; R. & V.A., 1925, s. 08; 14 Halsbury's Statutes 687.
 (c) 14 Halsbury's Statutes 686.
 (d) 26 Halsbury's Statutes 429.
 (e) R. & V.A., 1925, s. 9 (1); 14 Halsbury's Statutes 627.
 (f) *Ibid.*, s. 9 (5).
 (g) *Ibid.*, s. 9 (3).

Police District. As to the precepts of these authorities, see Vol. IX., pp. 155, 163 respectively. [902]

Precepts of County Councils. *Powers.*—A county council is empowered by sect. 183 of the L.G.A., 1933 (*h*), to issue precepts for the levying of rates to meet all liabilities falling to be discharged by the council, for which provision is not otherwise made. The precept must be so issued as to secure that the rate is levied on the whole of the county for general county expenses and, in the case of special county expenses, on the part of the county chargeable therewith; and it may include as separate items a contribution for general county purposes and a contribution for special county purposes. In order to arrive at the aggregate amounts required to be raised by precept, estimates must be prepared in accordance with sect. 182 of the L.G.A., 1933. Provisions dealing with the contents, form, mode of issue and other incidents of county precepts are contained in sect. 9 of the R. & V.A., 1925, and in rules made by the M. of H. under that section and under sect. 58 of the Act (*i*). [903]

Basis.—Under the law as it stood before the R. & V.A., 1925, came fully in operation, that is, before April 1, 1927, precepts of county councils were sent to boards of guardians, who included the amounts required in precepts which they in turn served on the overseers of each parish affected, requiring the individual parishes to provide specified sums calculated on the basis of assessable value. Since that date, county precepts have been sent to the rating authorities affected, and since April 1, 1929, they have called for the produce of a rate of a specified poundage. This latter reform was introduced with the object of removing the inequalities of burden which were sometimes created by the old system of apportioning expenditure on the basis of assessable value, without regard to any alterations of rateable value which took place after the amount required had been calculated or the precept issued. The poundage principle ensures that the same rate is levied in each of the rating areas affected in respect of expenditure of the county council which is chargeable on those rating areas.

The poundage principle applies to county precepts only; precepts of other authorities call for the payment of lump sums, unless a scheme has been approved by the M. of H. for applying the county code. The county precept requires the rating authority of each rating area affected to levy as part of the general rate (or as an additional item of the general rate) a rate of a specified amount in the pound, being the same amount for each rating area; it must state also the date or dates on or before which payments are required to be made on account, and the amount of each such payment (*k*). [904]

Issue.—For the purpose of enabling county councils to issue their precepts, every rating authority must before February 1 in each year transmit to the county council an estimate of the product of 1d. rate in the rating area during the ensuing financial year (see title PENNY RATE, ante, p. 156). The aggregate amount of the payments required by the precept must not exceed the sum which the rate poundage specified therein would produce on the basis of that estimate. Where a rating authority fails to transmit such estimate, the county council

(*h*) 26 Halsbury's Statutes 406.

(*i*) 14 Halsbury's Statutes 627, 679.

(*k*) R. & V.A., 1925, s. 9 (2) (a), (b); 14 Halsbury's Statutes 628.

may make their own estimate (*l*). The precept must be issued, or information as to the rate poundage to be levied thereunder must be given, to each rating authority affected, not less than twenty-one days before the beginning of the financial year or half-year, as the case may be, in which the rate is to be levied (*m*). [905]

Form.—Precepts must be in the form prescribed by the Rating and Valuation (Forms of Precept—County Councils) Rules, 1930 (*n*), or in a form substantially to the like effect, viz. :

FORM OF COUNTY COUNCIL PRECEPT.

Administrative County of

To the Rating Authority for the { Borough
Urban District } of
Rural District

The council of the above-mentioned county hereby give you notice that in respect of the financial (half-year) (year) beginning on the first day of.....19....., they will require from you the proceeds of the rates specified below;

AND they do accordingly hereby require you to levy the said rates as part of the general rate or as additional items of that rate, as the case may require, and to make payments thereof on account to..... (*o*) as follows :

£.....	on or before the.....	day of.....	19.....
£.....	on or before the.....	day of.....	19.....
£.....	on or before the.....	day of.....	19.....
£.....	on or before the.....	day of.....	19.....

and the balance thereof within 14 days after the date on which the total amount due shall have been ascertained in accordance with the provisions of the Rating and Valuation Act, 1925, and of the Rules made thereunder.

RATES TO BE LEVIED ON THE WHOLE OF THE RATING AREA.

General County purposes atin the pound.

Special County purposes atin the pound.

Totalin the pound.

RATES TO BE LEVIED ON PART ONLY OF THE RATING AREA.

Part of Rating Area chargeable.	Service.	Amount in the Pound.	
		s.	d.

* AND they do also give you notice that in respect of the above-mentioned period they will require from you the sums of money specified in the third column of the following table in respect of the services specified in the second column of that table, the cost of which is chargeable on that part only of your rating area specified in the first column of that table.

* AND they do accordingly hereby require you to pay the said sums to (*p*) on or before the day of.....19.....

(*l*) R. & V.A., 1925, s. 9 (2) (d).

(*m*) *Ibid.*, s. 9 (2) (e).

(*n*) S.R. & O., 1930, No. 541.

(*o*) Insert name and address of payee and any necessary directions.

(*p*) Insert name and address of payee and any necessary directions.

Part of Rating Area chargeable.	Service.	Sum. £.

Dated this day of 19 ..

(Signature) Clerk of the County Council.

NOTE.—The two paragraphs marked * and the table following them may be omitted where the precept is wholly on a poundage basis.

STATEMENT.

The following statement shows, in respect of each of the undermentioned services of the county council the cost of which is chargeable over the whole of the rating area, the equivalent, in terms of a rate in the pound, of the gross estimated expenditure on the services *less* any estimated income from Government grants or other sources (not being rates) specifically applicable thereto. In the case of the services marked * Government grants specifically applicable thereto are receivable.

SERVICES	Amount in the Pound for			
	General County Purposes.		Special County Purposes.	
	s.	d.	s.	d.
* Education : Elementary - - - - -				
* Education : Higher - - - - -				
Public Assistance - - - - -				
* Police - - - - -				
* Highways and Bridges - - - - -				
Public Health - - - - -				
Other Services and Expenses - - - - -				
Total of above items - - - - -				
<i>Deduct</i> the equivalent in terms of a rate in the pound of—				
(1) The Exchequer Grants under the Local Government Act, 1929 - - - - -				
(2) The proceeds of local taxation licence duties - - -				
(3) Other income or credits of the County Council, if any, not allocated to specific services - - -				
Total deductions - - - - -				
NET TOTALS - - - - -				

[1906]

The rules provide that the county council must specify in the precept (1) the rate in the pound required to be levied as part of the general rate; (2) the rate in the pound required to be levied as an additional item of the general rate in respect of each part of the rating area on which any expenses are chargeable separately, indicating the part so charged, and the purpose of the charge; (3) the amount and purpose of any amount chargeable on the rating area or any part thereof otherwise than by a specified rate poundage, and the area so charged; and they must include therein a statement showing in terms of rate

poundage : (i.) the gross expenditure, less the specific income, of each of the services specified in the form and of such of their other principal services as the county council think fit ; and (ii.) the Exchequer grants payable to the county council under the L.G.A., 1929. [907]

Amount Due under Precept.—The amount due under a precept to the authority by which it was issued is the amount produced by the rate poundage specified therein, and the rating authority must make payments in accordance with the requirements of the precept on account of the amount due thereunder (q). This sum is more precisely defined in the R. & V.A. (Product of Rates and Precepts) Rules, 1937 (r), as the product of 1d. rate in the appropriate area multiplied by the number of pence specified in the precept (s). After the close of the financial year the financial officer of the rating authority must so compute the amount due under the precepts issued in respect of that financial year ; and if the total amount so ascertained to be due exceeds the aggregate of the instalments required to be paid on account, the rating authority must forthwith pay the balance to the county council. Payment of an amount corresponding proportionately to the amount of rate arrears outstanding may, however, be temporarily deferred.

If the amount ascertained to be due under the precept is less than the aggregate amount of the payments required by the precept, the balance must be set off against any amount required by the next precept issued to the rating authority (t). As to the method of accounting for payments made under precepts, including the above adjustments, see title RATE ACCOUNTS. [908]

Interest on Overdue Payments.—Where the amount due under a precept, or any part thereof, is not paid by the specified date, the rating authority may be required to pay interest at 6 per cent. per annum from the due date ; but not in respect of any period before the expiration of six weeks from the commencement of the financial year or half-year, as the case may be, or when the proportion which the aggregate payments made under the precept bears to the aggregate amount of the instalments required by the precept exceeds the proportion which the number of days which have elapsed since the commencement of the financial year or half-year bears to the total number of days in that year or half-year (u). [909]

Precepts of Other Authorities. Parish Councils and Parish Meetings.
—For the purpose of obtaining sums necessary to meet the expenses of a parish council or of a parish meeting, the parish council, or the

(q) R. & V.A., 1925, s. 9 (2) (c) ; 14 Halsbury's Statutes 628.

(r) Issued as Provisional Rules on 7th January, 1938.

(s) Until 1936-37, urban rating authorities were required, under the proviso to s. 9 (2) (e) of the R. & V.A., 1925 ; 14 Halsbury's Statutes 628, to increase the amount due by a sum equal to that by which the produce of the rate would be increased if certain reliefs from rating given by Part II, of the Second Schedule to certain properties (tithes, land used as a railway, etc.) in urban rating areas only were not so given, and precepts required the rating authority to make provision accordingly by increasing as might be necessary the rate poundage required by the precept to be levied. This proviso was designed originally to continue the relief which certain classes of property enjoyed in respect of the general district rate before the enactment of the R. & V.A., 1925 ; but alterations in conditions since that Act was passed, and more especially the changes brought about by the L.G.A., 1929, rendered the proviso inequitable in its operation, and it was repealed, as from April 1, 1937, by s. 9 of the L.G. (Financial Provisions) Act, 1937.

(t) R. & V.A., 1925, s. 9 (2) (f).

(u) *Ibid.*, s. 9 (2) (g).

chairman of the parish meeting of a parish not having a separate parish council, are required to issue precepts to the council of the rural district in which the parish is situate. Any such precept may be enforced under and in accordance with the Poor Rate Act, 1889, or sect. 18 of the R. & V.A., 1925 (see *post*, "Enforcement of Precepts") (a). Such a precept will call for the raising of a lump sum, as the poundage principle does not apply. [910]

Assessment Committees.—The expenses of an assessment committee are chargeable on the rating area or areas comprised in the assessment area, in proportion to the rateable values of all property therein, and precepts may be issued by the assessment committee to rating authorities accordingly under sect. 58 of the R. & V.A., 1925 (b). No directions are given as to dates on which the precepts are to be issued or payments made thereunder; and sect. 9 does not apply. [911]

Catchment Boards.—As to the precepts which these bodies may issue to county councils, county borough councils and internal drainage boards, see title CATCHMENT BOARDS (Vol. II., p. 459). The form of precept is prescribed by the M. of A. & F. by the Land Drainage (Form of Precept) Regulations, 1930 (c), under the authority of sect. 74 of the Land Drainage Act, 1930 (d). [912]

Joint Boards.—The precepts of joint boards constituted under the P.H.A., including isolation hospital committees, joint tuberculosis boards and port health authorities, are subject to the provisions of sect. 309 of the P.H.A., 1936 (e), which requires the issue of precepts by the joint board to the local authority of each constituent district or contributory place for the purpose of obtaining payment of their respective contributions towards the joint board's expenses. The contributions shall be in proportion to the rateable value of the property in each district. The precept must state the sum to be contributed and require the authority affected to pay the sums therein mentioned within a time limited by the precept to the joint board or to such person as the joint board may direct. Payments due under precepts of a joint board are debts which may be recovered accordingly, without prejudice to the board's right to exercise their powers under sect. 13 of the R. & V.A., 1925 (f) (see *infra*). [913]

Railway Assessment Authority.—The expenses of the Railway Assessment Authority which was constituted under the Railways (Valuation for Rating) Act, 1930 (g), are met by precepts served on county and county borough councils, being apportioned on the basis of the net annual values of railway hereditaments of the railway companies within the several counties and county boroughs. [914]

Enforcement of Precepts.—Sect. 18 of the R. & V.A., 1925 (h), provides a remedy which is available to every precepting authority to which any amount is payable directly or indirectly by a rating authority in pursuance of a precept. Where payment is not made, the precepting authority may, after twenty-one days' notice given to the rating authority, apply to the M. of H. for a certificate; and if the Minister is satisfied that the rating authority have refused or through

(a) L.G.A., 1933, s. 198 (6), (7); 26 Halsbury's Statutes 411. For those two Acts see 14 Halsbury's Statutes 502 and 687.

(b) 14 Halsbury's Statutes 676.

(c) S.R. & O., 1930, No. 1132.

(d) 28 Halsbury's Statutes 576.

(e) 29 Halsbury's Statutes 518.

(f) 14 Halsbury's Statutes 687.

(g) See Sched. II., Part II., paras. 2 and 3; 23 Halsbury's Statutes 480.

(h) 14 Halsbury's Statutes 687.

wilful neglect or wilful default failed to raise the amount by a rate, or that, having raised the amount by a rate, they have refused or through wilful neglect or wilful default failed to pay the amount due under the precept, he may issue a certificate to that effect. Thereupon the precepting authority may apply for the appointment of a receiver as if they were a secured creditor for the amount due, with interest thereon at 6 per cent. per annum, under a security issued under the Local Loans Act, 1875. A receiver appointed on such application will have the same powers as if he were appointed under sect. 12 of that Act (i). If the M. of H. thinks fit, he may make the application himself. These powers are additional to, and not in derogation of, any other powers for enforcing compliance with a precept issued to a rating authority, e.g. *mandamus*, followed by imprisonment for contempt of court (k).

The remedy by way of appointment of a receiver is not available in all cases. A catchment board, for example, could not apply it to enforce payment under a precept issued to a county council or an internal drainage board, for neither of these bodies is a rating authority. Sect. 22 (5) of the Land Drainage Act, 1930 (l), provides, however, that compliance with any precept issued by a catchment board may be enforced by *mandamus*. [915]

London.—Under sub-sect. (4) of sect. 68 of the L.G.A., 1888 (m), the L.C.C. may levy county contributions in respect of expenditure for general county purposes and under sub-sect. (5) for special county purposes. Under sub-sect. (6) precepts may include items for both general and special county purposes, and are to be assessed in proportion to annual value as determined by the standard or basis for the county rate. Under sub-sect (9), as amended by the L.C.C. (General Powers) Act, 1933, sect. 67 (n), county contributions may be made retrospective in order to raise money for the payment of costs incurred or having become payable at any time before the demand of the contributions. Under the London Government Act, 1899, sect. 11 (2) (o), precepts issued by any authority in London for the purposes of obtaining money which is ultimately to be raised out of the rates within a borough must be sent to the borough council at their office addressed to the council or to the town clerk. "Precept" for this purpose includes any order, certificate, warrant or other document of a like character. [916]

The Metropolitan Police Act, 1829, sects. 23—30 (p), authorises the levy of a police rate on the overseers of parishes and occupiers. Under the London Government Act, 1899, sect. 11 above-mentioned, this rate is raised by the metropolitan borough councils by precepts issued by the receiver for the metropolitan police district. (See title METROPOLITAN POLICE, Vol. IX., p. 154.) Under the Local Authorities (Financial Provisions) Act, 1921, sect. 2 (q), where a borough council fails to meet any precept, a receiver may be appointed on the application either of the authority issuing the precept or the Minister of Health. As to precepts issued on the L.C.C. by other authorities, see title LONDON, RATING, Vol. VIII., p. 238. [917]

(i) 12 Halsbury's Statutes 245. See title LOCAL LOANS ACT.

(k) *R. v. Poplar Borough Council* (No. 1), [1922] 1 K. B. 72; 38 Digest 634, 1531.

(l) 23 Halsbury's Statutes 545.

(m) 10 Halsbury's Statutes 741.

(n) 26 Halsbury's Statutes 598.

(o) 11 Halsbury's Statutes 1232.

(p) 12 Halsbury's Statutes 751—754.

(q) 11 Halsbury's Statutes 1343.

PRELIMINARY DRAFT SPECIAL LIST

See VALUATION LIST.

PRELIMINARY STATEMENT

See TOWN PLANNING SCHEMES.

PRESERVATIVES

	PAGE		PAGE
INTRODUCTORY - - -	348	ARTIFICIAL COLOURING MATTERS	350
DEFINITION OF PRESERVATIVES	349	ENFORCEMENT - - -	350
ARTICLES WHICH MAY NOT CONTAIN PRESERVATIVES - - -	349	IMPORTATION - - -	351
FORBIDDEN AND PERMITTED PRE- SERVATIVES - - -	349	OFFENCES - - -	351
	349	PENALTIES - - -	351

See also titles :

ADULTERATION OF FOOD ;
ANALYST ;
EGGS ;
FOOD AND DRUGS ;
FOOD AND DRUGS AUTHORITIES ;

FRUIT ;
INSPECTORS OF FOOD AND DRUGS ;
MILK AND DAIRIES ;
SAMPLING OF FOOD AND DRUGS.

Introductory.—The use of chemical preservatives in food is governed by the Public Health (Preservatives, etc., in Food) Regulations, 1925, as amended by regulations of 1926 and 1927 (a). The regulations, which have been printed in their amended form, are enforced by food and drugs authorities (b). The promulgation of the regulations and their active enforcement have led to great changes in trade practice. Before 1927, as may be gathered from the report made in 1924 by the Departmental Committee on the use of Preservatives and Colouring Matters in Food, boric acid and borax were very commonly found in bacon, butter, margarine, cream, cakes, egg products, meat and meat products. Meat and meat products were also frequently treated with sulphur dioxide in solution or by alkaline sulphites in the form of a dusting powder. Many cordials and the like used to contain salicylic acid. These practices have not entirely ceased, but instances have now become comparatively rare. [918]

(a) S.R. & O., 1925, No. 775 ; 1926, No. 1557 ; 1927, No. 577.

(b) See Vol. VI., p. 128.

Definition of Preservatives.—The definition of "preservative" in the regulations excludes common salt, salt-petre, sugars, lactic acid, acetic acid (or vinegar), glycerine, alcohol, herbs, hop extract, spices and essential oils used for flavouring purposes, and any substance added by the process of curing or smoking; but includes all other substances capable of retarding or arresting the decomposition or fermentation of food or of masking any of the evidences of putrefaction. [919]

Articles which may not Contain Preservatives.—The only articles which may contain an added preservative are those enumerated in the First Schedule to the regulations. The following articles, among others, are not so mentioned and may not contain an added preservative:

milk	cream
butter	margarine
cheese	bacon and ham
brawn	meat and potted meat
fish and potted fish	egg products
cake	lemon curd
mincemeat	

But it is not an offence to sell an article such as fruit or vegetables containing a small quantity of preservative naturally present therein. Some fruits, for example, naturally contain small proportions of boric or benzoic acid, and peas and other vegetables may contain traces of copper as a natural ingredient (c). [920]

Forbidden and Permitted Preservatives.—The use of formaldehyde, borax, boric acid, salicylic acid and fluorides is entirely prohibited. The only preservatives tolerated, in specified articles, in regulated proportions and subject to certain special conditions, are benzoic acid and benzoates and sulphur dioxide and sulphites. Schedule I. to the regulations contains a list showing the articles of food which may contain either of these two preservatives and the proportion of preservative permitted. Sulphur dioxide (or sulphites) may be added to the following articles: sausages and sausage meat containing raw meat, cereals and condiments; fruit and fruit pulp of certain kinds (not dried) for conversion into jam or crystallised, glacé or cured fruit; certain kinds of dried fruit; jam, marmalade and fruit jelly; crystallised, glacé or cured fruit; certain kinds of fruit and fruit pulp; sugar (including solid glucose) and cane syrup; cornflour and other prepared starches; corn syrup (liquid glucose); gelatin; beer, cider and alcoholic wines.

Benzoic acid or benzoates may be added to unfermented grape juice, brewed ginger beer, coffee extract and pickles and jams made from fruit or vegetables. Sweetened mineral waters, cordials and fruit juices, and most kinds of non-alcoholic wine may contain either sulphur dioxide or benzoic acid. [921]

Schedule II. contains rules with regard to declarations on labels applied to sausages, sausage-meat, coffee extract, pickles and sauces, and (where the proportion of benzoic acid exceeds 600 parts per million) grape juice and wine. But instead of giving the required declaration by label, a seller of food may elect to exhibit a conspicuous notice giving the necessary information to a customer buying the goods at

(c) See Circular No. 806 of M. of H., dated June 29, 1927.

the shop or stall. The rules with regard to labelling do not apply when an article of food is exposed or offered for sale by retail (or delivered to a customer in a hotel or restaurant) for consumption on the premises.

The regulations contain a proviso with respect to articles of food other than meat which contain sulphur dioxide. No offence is committed if it is proved that the article of food is intended to be used in the preparation of an article which may contain preservative, or if the article of food (being itself an article, other than fruit or fruit pulp, in which preservative is permitted) is intended to be so treated before sale as to comply with the requirements of the regulations as regards the proportion of sulphur dioxide which it contains.

It is unlawful to sell an article, recommended on the label of its container or by any circular or advertisement, for use as a preservative or colouring matter for an article of food if the recommendation is so worded as to be likely to lead to a breach of the regulations or if the preservative is not itself labelled in the manner prescribed in the Second Schedule to the regulations.

No oxidising or preservative agent may be used in the cleansing of vessels used by a cowkeeper or dairyman for containing, measuring or stirring milk (d). [922]

Artificial Colouring Matters.—The regulations forbidding the manufacture and sale of articles containing the prohibited preservatives similarly forbid the presence of certain colouring matters, namely : (1) compounds of antimony, arsenic, cadmium, chromium, copper, mercury, lead or zinc ; (2) gamboge ; (3) specified coal-tar dyes, usually known by the names picric acid, victoria yellow, Manchester yellow, aurantia and aurine. Otherwise, there is no objection to the addition to articles of food of colouring matters, not intended to conceal inferior quality and not injurious to health, except that in no circumstances may any added colouring matter be contained in milk (e). In practice, harmless coal-tar and other dyes are used in the manufacture of enormous quantities of articles of food and serve a useful purpose in improving their appearance. Before the regulations were made, canned peas and other green vegetables used to contain substantial quantities of copper salts. This is now unlawful. [923]

Enforcement.—The local authority for the enforcement of the regulations is the food and drugs authority (f) except in relation to importation, and an authorised officer of food and drugs authority may at all reasonable times enter premises where preservatives or preserved articles of food are prepared, packed, labelled or stored, and may take samples, paying for them if so required. He is required to comply with the formalities prescribed by the Food and Drugs (Adulteration) Act, 1928 (g), when he procures samples for analysis and the provisions of that Act apply to the analysis of samples.

Proceedings may be taken against a previous seller, for example, a manufacturer or wholesale vendor of an article of food sold by a retail tradesman contrary to the regulations ; and such proceedings may be taken in the district where the tradesman sells the article even

(d) A. 21, Milk and Dairies Order, 1926 ; S.R. & O., No. 821.

(e) Milk and Dairies (Amendment) Act, 1922, s. 4 ; 8 Halsbury's Statutes 881.

(f) See title FOOD AND DRUGS AUTHORITIES, Vol. VI., p. 128.

(g) 8 Halsbury's Statutes 884.

though the previous seller resides or carries on business in another area and though the ordinary formalities (division of the sample, and the like) were not carried out when the sale by the manufacturer or wholesale dealer took place (h). [924.]

Importation.—Part III. of the regulations deals with the importation of preservatives and preserved food. It is to be enforced primarily by the Commissioners of Customs and Excise and by port health authorities, though other local sanitary authorities may have powers with respect to imported articles landed from a ship or aircraft outside the jurisdiction of a port health authority. Particulars of any offence relating to the importation of preserved articles of food are to be reported to the M. of H. [925.]

Offences.—The principal offences under the regulations are : (i.) the manufacture for sale and the sale of any article of food containing an added preservative or colouring matter not specifically permitted, or containing too much of a permitted preservative ; (ii.) the exposure for sale, offering for sale, or sale by retail of a preserved article of food (*e.g.* sausages) not labelled as required by the regulations ; (iii.) the sale of an article recommended by a label on the container or by advertisement for use as a preservative or colouring matter in such a way as to be likely to lead to its being used contrary to the regulations ; and (iv.) the sale of a preservative not labelled in the prescribed manner. In each instance the offence is that of " wilfully " neglecting or refusing to obey or carry out the regulations. " Wilful neglect " must be something a little more than mere oversight (see the case cited in note (h), *infra*).

An offence against the regulations, arising from the sale of a preserved article of food, may also be an offence under sect. 1 or sect. 2 of the Food and Drugs (Adulteration) Act, 1928 (i), as the regulations are expressly applied to those sections. For example, a prosecution under sect. 2 of the Act may be instituted for the offence of selling an article not of the nature, quality or substance demanded by reason of the presence of added preservative. In such a case, it is not necessary to allege wilful neglect or default. [926.]

Penalties.—The above-mentioned regulations were made in virtue of the P.H.A., 1896 (k), as extended by the P.H. (Regulations as to Food) Act, 1907 (l), and the power to impose penalties was derived from sect. 1 (3) of the first-mentioned Act. After September 30, 1937, the Act of 1896 is repealed by the P.H.A., 1936, but the regulation making power is re-enacted in sect. 148 of the last-mentioned Act (m). It follows in virtue of sect. 38 (1) of the Interpretation Act, 1889 (n), and sect. 346 (1) (c) of the Act of 1936 (o) that the penalties appointed by sect. 148 (5) (p) will apply to breaches of the regulations. Those penalties may, as under the previous law, amount to a fine not exceeding £100, with a further penalty not exceeding £50 per day in the case of a continuing offence. [927.]

(h) Part III. of the Regulations of 1925. See also *Twynham v. Badcock*, [1932] 2 K. B. 540; Digest Supp.

(i) 8 Halsbury's Statutes 884; see Vol. VI., pp. 118 *et seq.*

(k) 18 Halsbury's Statutes 871.

(l) 8 Halsbury's Statutes 862.

(m) 29 Halsbury's Statutes 427.

(n) 18 Halsbury's Statutes 1005.

(o) 20 Halsbury's Statutes 541.

(p) *Ibid.*, 428.

PRESIDING OFFICER

See ELECTIONS.

PRESS, ADMISSION OF

See ADMISSION TO MEETINGS.

PREVENTION OF CRUELTY TO CHILDREN

PAGE	PAGE
STATUTORY PROVISIONS - - - 352	ALLOWING JUVENILES TO BE IN BROTHELS - - - - 354
POWERS AND DUTIES OF LOCAL AUTHORITIES - - - 352	OFFENCES WITH REGARD TO INTOXICANTS, ETC. - - - - 354
AGE OF OFFENDERS AND OF PERSONS IN RESPECT OF WHOM OFFENCES COMMITTED - - - 353	BEGGING - - - - 355
PROOF OF AGE - - - 353	VAGRANCY AND EDUCATION - - - - 356
CRUELTY : OFFENCES AND PUNISHMENT - - - 353	EXPOSURE TO RISKS - - - - 356
SEDUCTION OR PROSTITUTION - - - 354	POWER OF ARREST - - - - 357
	PROCEDURE - - - - 357
	EVIDENCE - - - - 357

See also titles : EMPLOYMENT OF CHILDREN ; INFANTS, CHILDREN AND YOUNG PERSONS ; JUVENILE COURTS.

Statutory Provisions.—These chiefly occur in Part I. of the Children and Young Persons Act, 1933 (*a*). They deal with cruelty and with exposure to moral or physical danger. [928]

Powers and Duties of Local Authorities.—By sect. 98 (1) of the Act (*b*) (as amended by the Third Schedule to the P.H.A., 1936), proceedings for any offence under the Act may be instituted by a local authority (see next paragraph) or by a poor law authority, and by sect. 277 of the L.G.A., 1933 (*c*), a local authority may by resolution authorise a member or officer to institute or defend proceedings before a court of summary jurisdiction or to appear on behalf of the authority in any proceedings instituted by it or against it. The member or officer may be authorised generally or in respect of a particular matter, and need not be a barrister or a solicitor.

For the purpose of the exercise of powers or duties under the

(*a*) 26 Halsbury's Statutes 172.
(*c*) *Ibid.*, 452.

(*b*) *Ibid.*, 284.

Children and Young Persons Act, 1933, the local authority is designated, by sect. 96, as (i.) in respect of children, the local authority for elementary education, and (ii.) in respect of other persons, councils of counties and county boroughs. To this section there are certain provisos, and powers to make arrangements between councils are conferred. [929]

By the Poor Law Act, 1930, sect. 67 (d), a county council or county borough council may, with the consent of the Minister of Health, subscribe to the funds of any society for the prevention of cruelty to children and certain other institutions. [930]

Prosecutions for cruelty to children are often undertaken by the National Society for the Prevention of Cruelty to Children or by the police. Often, however, there is co-operation between the local authority, the police and the society. A local authority is concerned (1) since by sect. 62 (2) of the Children and Young Persons Act, 1933, the primary responsibility of bringing before the court any child or young person in need of care or protection is placed on them; (2) since they are to be notified when proceedings are taken and it is then their duty to render available to the court information as to home surroundings, etc.; (3) in that they may be a "fit person." [931]

Age of Offenders and of Persons in Respect of whom Offences are Committed.—Offences of cruelty and of exposure to risk of burning (see below) can be committed only by persons who have attained the age of sixteen years. Other offences dealt with in this article may be committed by anyone whom the law regards as capable of a criminal offence. In some of the offences, as will be seen, there is an age limit with regard to the person in respect of whom the offence is committed. In this connection it is to be remembered that a person attains the age of sixteen at the first moment of the day preceding the sixteenth anniversary of his birthday, and so for other ages (f). [932]

Proof of Age.—It is not always necessary that there should be strict proof of the age of the child victim, though a court will naturally avail itself of such sources of information as are available, and, in case of dispute, will try to obtain strict proof (g). [933]

Cruelty.—The offences of cruelty to persons under sixteen, dealt with by sect. 1 of the Act, can, as stated above, be committed only by persons who have attained that age, and only by persons having custody, charge or care of persons under that age. The offences are wilful assault, ill-treatment, neglect, abandonment, exposure in manner likely to cause unnecessary suffering or injury to health; or causing or procuring any of these offences. Injury to health includes injury to, or loss of, sight, hearing or limb, or organ of the body, and any mental derangement. Neglect includes failure to provide adequate food, clothing, medical aid or lodging, or failure to take steps to procure these under the Acts relating to the relief of the poor. A person may be convicted of one of these offences in spite of the fact that actual suffering or injury to health, or even the likelihood of it, was obviated by the action of some other person, or notwithstanding the death of the child or young person in question.

(d) 12 Halsbury's Statutes 1001.

(f) *Herbert v. Turball* (1663), 1 Keb. 589; 28 Digest 140, 6; *Re Shurey, Savory v. Shurey*, [1918] 1 Ch. 264; 28 Digest 140, 12.

(g) See rules as to presumption of age in s. 99 of the Children and Young Persons Act, 1933; 26 Halsbury's Statutes 234.

Proceedings for these offences may be taken either on indictment or summarily. [984]

Seduction or Prostitution.—Any person who has the custody, charge or care of a girl under the age of sixteen years who causes or encourages her seduction, unlawful carnal knowledge or prostitution, or the commission of an indecent assault upon her, is guilty of a misdemeanour and is liable to imprisonment for not more than two years (h). If a girl has been so offended against, or has become a prostitute, a person is deemed to have caused or encouraged it if he has knowingly allowed her to associate with, or to enter or continue in the employment of, a prostitute or a person of known immoral character (i). In certain circumstances, failure to prevent carnal knowledge from taking place may come within the terms of the section (k). Seduction means inducing a girl to part with her virtue for the first time (l).

A girl under sixteen years of age cannot be married; any purported marriage is void (m).

Prostitution means the offering by a woman or girl, for reward, of her body commonly for purposes of lewdness, not necessarily for natural sexual connection (n). [985]

Allowing Juveniles to be in Brothels.—Any person having custody, charge or care of a child or young person, between the ages of four and sixteen years, who allows him to reside in or to frequent a brothel, is guilty of an offence. The person charged may be proceeded against by indictment or summarily. A brothel is a place resorted to by persons of both sexes for the purpose of illicit intercourse, whether the women are common prostitutes or not (o). A block of flats inhabited by different prostitutes may constitute a brothel (p), but a prostitute who receives men in her own room and does not allow other women to use her premises for such a purpose is not keeping a brothel (q). Children found in a brothel are often brought before a juvenile court as being in need of care or protection within the meaning of sect. 61 of the Act. [986]

Offences with Regard to Intoxicants, etc.—The holder of a licence must not allow a child to be in a bar of licensed premises during "permitted" hours. A bar, for this purpose, means any open drinking bar or any part of the premises used exclusively or mainly for the sale and consumption of intoxicants. The restriction does not apply to a child of the licensee, or a child who resides in but is not employed on the licensed premises, or to a child who is merely passing through a bar because it is the only convenient way to or from some other part of the premises other than a bar. There is also an exemption in respect of railway refreshment rooms and other premises constructed, fitted and intended to be used in good faith for some purpose to which a licence is merely ancillary.

(h) Children and Young Persons Act, 1933, s. 2 (1); 26 Halsbury's Statutes 174.

(i) *Ibid.*, s. 2 (2).

(k) *R. v. Ralphs* (1913), 9 Cr. App. Rep. 80; 15 Digest 851, 9345. But see also *R. v. Chainey* (1914), 9 Cr. App. Rep. 175; 15 Digest 851, 9346.

(l) *R. v. Moon*, [1910] 1 K. B. 818; 15 Digest 851, 9344.

(m) Age of Marriage Act, 1929, s. 1; 9 Halsbury's Statutes 372.

(n) *R. v. De Munk* (1918), 82 J. P. 160; 15 Digest 850, 9337.

(o) *Winter v. Woolfe* (1900), 95 J. P. 20; Digest (Supp.).

(p) *Durose v. Wilson* (1907), 71 J. P. 263; 15 Digest 757, 8143.

(q) *Singleton v. Ellison*, [1895] 1 Q. B. 607; 15 Digest 756, 8140.

It is an offence, punishable on summary conviction with a fine not exceeding £3, to give or cause to be given to any child under five years of age any intoxicating liquor, except upon a medical practitioner's order, or in case of sickness, apprehended sickness or other urgent cause (r).

There are also penalties for the improper sale of liquor to children under sect. 68 of the Licensing (Consolidation) Act, 1910 (s). And by sect. 2 of the Licensing Act, 1902 (t), it is an offence for any person to be drunk in a public place or on licensed premises while having charge of a child under the age of seven years. If the child appears to the court to be under seven, it is deemed so to be unless the contrary is proved. [937]

There are restrictions also on the sale of tobacco to juveniles. By sect. 7 of the Children and Young Persons Act, 1933, any person who sells to a person apparently under sixteen years of age any tobacco (which for this purpose includes cigarettes and smoking mixtures intended as a substitute for tobacco—or cigarettes including cut tobacco rolled in paper, leaf or other material so as to be capable of immediate use for smoking) or cigarette papers, whether for his own use or not, is liable to a fine not exceeding £2 for a first offence, and £5 for a second offence, and £10 for a third or subsequent offence (u). There is a proviso that a person is not to be convicted of the sale of tobacco in a form other than cigarettes, if he did not know, or had no reason to believe, that the tobacco was for the use of the juvenile. It is not an offence to sell tobacco or cigarette papers to any person who is at the time employed by a manufacturer or dealer in tobacco, whether wholesale or retail, for the purpose of his business, or who is a boy messenger in uniform in the employment of a messenger company and employed as such at the time (a). A constable, or a park-keeper in uniform, may seize tobacco or cigarette papers in the possession of any person apparently under the age of sixteen whom he finds smoking in any street or public place. Such seizure is not authorised in the case of persons in the employment of tobacco dealers and manufacturers, or of boy messengers in uniform (b). Automatic machines for the sale of tobacco which are extensively used by young persons under the age of sixteen may also be the subject of proceedings in a court of summary jurisdiction (c). [938]

Begging.—The fact that a child or young person under seventeen is found begging may be some evidence that he is in need of care and protection within the meaning of sect. 61 of the Children and Young Persons Act, 1933 (d), and liable to be brought before a juvenile court.

It is an offence for any person to cause or procure any child or young person under sixteen years of age to be in any street, premises or place for the purpose of begging or receiving alms or of inducing the giving of alms. In the case of a person who has the custody, charge or care of the child or young person, it is an offence to allow him to be there for such purpose. The offence is committed whether

(r) Children and Young Persons Act, 1933, s. 5; 26 Halsbury's Statutes 175.

(s) 9 Halsbury's Statutes 1024.

(t) *Ibid.*, 964.

(u) See note (g), *ante*, p. 353.

(a) Children and Young Persons Act, 1933, s. 7 (4); 26 Halsbury's Statutes 176.

(b) *Ibid.*, s. 7 (3), (4).

(c) *Ibid.*, s. 7 (2).

(d) See s. 61 (2); 26 Halsbury's Statutes 208.

there is or is not a pretence of singing, playing, performing, offering anything for sale or otherwise. A person having custody, charge or care, who is charged with such an offence is presumed to have allowed the child or young person to be in the street, premises or place for the unlawful purpose mentioned in the section, unless he proves the contrary, if it is proved that the child or young person was there for such purpose and that the person charged allowed him to be there (e). Further, if any person who is singing, playing, performing or offering anything for sale in a street or public place has with him a child (*i.e.* under fourteen years of age) who has been lent or hired to him, the child is deemed, for the purpose of the section, to be there for the purpose of inducing the giving of alms.

"Street" includes any highway and any public bridge, road, lane, footway, square, court, alley or passage, whether a thoroughfare or not (f). [938]

Vagrancy and Education.—A person who habitually wanders from place to place, taking with him a child of five years of age or more, is liable to a fine not exceeding, with costs, 20s., unless he proves that the child is totally exempted from school attendance or that the child is not, in fact, being prevented from receiving efficient elementary education. There is an exemption in the case of canal boat children, and special provision as to parents engaged in travelling during the months of April to September (g).

A constable who finds a person wandering with a child, and who has reason to suspect that the offence is being committed, may apprehend the alleged offender and may take the child to a place of safety. The child may then be dealt with under sects. 61 and 62 of that Act (h). [940]

Exposure to Risks.—If a child under the age of seven years is killed or suffers serious injury through being in a room containing an open fire grate insufficiently protected against risk of burning or scalding, any person of the age of sixteen years or more who having custody, charge or care of the child allowed him to be in the room, without taking reasonable precautions against such risk, is liable on summary conviction to a fine not exceeding £10 (i).

Special precautions must be taken to guard children from danger at entertainments. If the majority of persons attending an entertainment in a building consists of children (*i.e.* under fourteen years of age) and the number of children exceeds a hundred, the person who provides the entertainment is under a duty to station a sufficient number of properly instructed adult attendants, wherever necessary, so as to prevent overcrowding of the building or any part of it, and to control the movement of all those who attend the entertainment, both in entering and leaving, and to take all reasonable precautions for the safety of the children (k). The occupier of a building who permits it to be used for hire or reward, for the purpose of an entertainment, must take all reasonable steps to see that those provisions are fulfilled (l).

(e) Children and Young Persons Act, 1933, s. 4.

(f) *Ibid.*, s. 107.

(g) *Ibid.*, s. 10.

(h) See title CARE AND PROTECTION OF CHILDREN, Vol. II., p. 412.

(i) Children and Young Persons Act, 1933, s. 11.

(k) *Ibid.*, s. 12 (1).

(l) *Ibid.*, s. 12 (2).

For failure to fulfil any obligation imposed by sect. 12 of the Act, the penalty on summary conviction is, in the case of a first offence, a fine not exceeding £50, and in case of a second or subsequent offence not exceeding £100. If the building is licensed under the Cinematograph Act, 1909 (*m*), or under any of the enactments relating to the licensing of theatres or music and dancing, the licence may be revoked by the authority which granted it (*n*). A constable, or an officer authorised by the authority granting the licences referred to above, may enter a building for the purpose of seeing whether the provisions of the section are being put into effect (*o*).

Proceedings under the section are to be instituted by the county or county borough council in the case of a building licensed by the Lord Chamberlain, or under the Cinematograph Act, 1909 (*p*), or under the enactments relating to theatres or music and dancing. In other cases the police authority take proceedings (*q*).

The section does not apply to an entertainment given in a private dwelling-house (*r*). [941]

Power of Arrest.—For any offence mentioned in the First Schedule to the Children and Young Persons Act, 1933, a constable may arrest a person who commits such offence within his view, if the constable does not know and cannot ascertain his name and residence. Similarly, he may arrest without warrant a person whom he has reason to believe to have committed such an offence, if he has reasonable ground for believing that the alleged offender will abscond or he does not know and cannot ascertain his name and address. As a general rule, bail must be granted by the police (*s*). [942]

Procedure.—Where a person is charged with cruelty, or with any of the offences mentioned in the First Schedule to the Act, in respect of two or more children or young persons, there need not be separate summonses or informations in respect of each; but if they are all included in one information dealt with summarily, there must be only one conviction. As an exception to the general rules as to duplicity of charge, it is also provided that persons may be charged alternatively or together as having custody, charge or care; and with the offences of assault, ill-treatment, neglect, abandonment or exposure, together or separately; and with committing an offence in a manner likely to cause unnecessary suffering or injury to health, alternatively or together. Here, again, on summary conviction there must not be more than one penalty on an information. Summary proceedings for these offences must be commenced within six months of the offence; that is to say, the offence must have been wholly or partly committed within six months before the information is laid. Evidence may, however, be given of earlier acts constituting the offence. If the offence be continuous, the date of all acts constituting it need not be given in the information or indictment (*t*). [943]

Evidence.—Where a person is charged with any offence mentioned in the First Schedule to the Children and Young Persons Act, 1933

(*m*) 19 Halshury's Statutes 352.

(*n*) Children and Young Persons Act, 1933, s. 12 (3).

(*o*) *Ibid.*, s. 12 (4).

(*q*) *Ibid.*, s. 12 (5).

(*s*) *Ibid.*, s. 13 (1).

(*p*) *Ibid.*, s. 12 (5).

(*r*) *Ibid.*, s. 12 (6).

(*t*) *Ibid.*, s. 14.

(which includes offences against sects. 1, 2, 3, 4 and 11) the wife or husband of the accused may, by sect. 15 of the Act, give evidence for the prosecution without the consent of the accused. The witness is competent, but not compellable (*u*) and should be informed that he or she is not bound to give evidence.

If it should happen that the evidence of a child of tender years is relied upon by the prosecution, the need of corroboration must be considered (*a*). In the case of the unsworn evidence of a child, given by virtue of sect. 38 of the Act, corroboration in a material particular is a statutory requirement.

Where under sect. 1 of the Act, the question of the insurance of a child's life is relevant, a copy of a policy of insurance, certified by an officer or agent of the company granting the policy, is evidence that the child or young person stated therein to be insured has in fact been so insured, and that the person in whose favour the policy has been granted is the person to whom the insurance money is legally payable (*b*). [044]

(*u*) See *Leach v. R.*, [1912] A. C. 305; *R. v. Acaster* (1912), 106 L. T. 384; 14 Digest 453, 4800, 4805.

(*a*) *R. v. Hutton* (1925), 19 Cr. App. Rep. 29; Digest Supp.

(*b*) Children and Young Persons Act, 1933, s. 1 (6) (b).

PREVENTION OF DISEASE IN SCHOOLS

	PAGE		PAGE
INTRODUCTORY - - - - -	358	POLICY - - - - -	362
ACTS AND REGULATIONS - - - - -	359	School Closure - - - - -	362
General - - - - -	359	Exclusion - - - - -	363
Education Code - - - - -	359	METHODS AND PRACTICE - - - - -	364
Special Services - - - - -	360	School Closure - - - - -	364
CO-ORDINATION BETWEEN EDUCATION AND HEALTH AUTHORITIES - - - - -	361	Exclusion - - - - -	364
		Exceptions - - - - -	366
		Sources of Infection - - - - -	367

See also titles : EDUCATION ; MEDICAL OFFICER OF HEALTH.

Introductory.—Prevention of disease is the aim and object of most of the activities of public health departments, and indeed of several other departments of local government, e.g. those which are concerned with the provision and maintenance of water-supplies, the collection, removal and disposal of refuse, drainage and sewage disposal and housing; the same objective may be said to be an important pre-occupation of departments concerned with parks and public open spaces and to be at the root of public assistance measures. The substance of this article is much narrower in scope, since it is mainly concerned with

the policy, practice and methods adopted by authorities for the prevention of the spread of disease among school children. The law and practice generally applicable to the control of infectious disease is discussed elsewhere in this work, especially under the titles DISEASES, DISINFECTION, INFECTIOUS DISEASES and ISOLATION HOSPITALS, and these should be consulted. [945]

Acts and Regulations. *General.*—The P.H.A., 1875 (a), makes no specific provision for the prevention of the spread of infection in school, nor, as from October 1, 1937, does the P.H.A., 1936, Sect. 148 (b) of the latter Act, however, makes it an offence for any person having the care of a person whom he knows to be suffering from a notifiable disease (b) to cause or permit the sufferer to expose other persons to the risk of infection by his presence or conduct in any street, public place, etc., and sect. 159 (2) (a) contains a similar prohibition as regards a public conveyance. A child could hardly attend school without undergoing such exposure, unless under very exceptional circumstances. Sect. 150 of this Act also affords control over the attendance at school of infective children, since it prescribes that the person in charge of a child who is or has been suffering from, or has been exposed to, infection of a notifiable disease, shall not, after receiving a notice from the M.O.H., prohibiting attendance, permit the child to attend until the M.O.H. has certified that attendance may be resumed without risk of communicating the disease to others. Part of the information necessary for the exercise of such control may be obtained through the provision contained in sect. 151, which places an obligation upon the principal of a school (c) in which a scholar is suffering from a notifiable disease to furnish to the local authority, if required, and for a prescribed fee, a list of the names and addresses of scholars (not being boarders) attending the school or any of its departments. The actual patients will usually, in fact, come to the knowledge of the authority by notification. [946]

Education Code.—These general powers apply to all schools, whether managed privately or by local education authorities; but in schools provided by the latter more direct and effective measures may be taken by medical officers of health or school medical officers acting under the Code of Regulations for Public Elementary Schools, 1926, of the Board of Education (d). The power of the Board of Education to make such regulations is contained in sect. 118 of the Education Act, 1921 (e). In so far as they relate to medical inspection and treatment such regulations are to be made by the Minister of Health, but his powers may be, and are, exercised by the Board of Education on his behalf and with his authority. By Art. 20 (b) of the regulations, local education authorities may make arrangements for the ascertainment and exclusion from school of children with a view to the prevention of the spread of disease or because their uncleanness or verminous condition is detrimental to other children; and by Art. 23 (b) schools,

(a) 13 Halsbury's Statutes 623.

(b) For the meaning of this term, see P.H.A., 1936, s. 343 (1); 29 Halsbury's Statutes 538.

(c) This phrase means the person in charge of the school, and includes, where the school is divided into departments and no one person is in charge of the whole school, the head of any department.

(d) S.R. & O., 1927, No. 1004.

(e) 7 Halsbury's Statutes 193.

or departments of schools, may be closed for medical reasons on the advice or with the approval of the school medical officer. To overcome the inclination of authorities to close schools merely because of the adverse effect on grants which might arise from low attendance, the Board recognises the omission of meetings and attendances, in calculating the average attendance for any week, if the attendance has fallen below 60 per cent. and the school medical officer certifies that the fall may reasonably be attributed to the prevalence of epidemic illness (*f*). A school must also be closed or individual scholars excluded from school for a specified time in order to prevent the spread of disease, or any danger to health likely to arise from the condition of a school, either on the requirement of the health authority of the district in which the school is situated, or of any two of its members acting on the advice of the M.O.H. (Art. 22). [947]

It will be observed that the words "infectious disease" do not appear in any of these Articles. Schools may be closed or children excluded by reason of any circumstances likely to cause the dissemination of disease or to endanger the health of the scholars. In effect the powers and responsibilities of authorities under these regulations extend to any diseases which may reasonably be regarded as communicable. [948]

Special Services.—The conduct of these services is governed by the Board of Education (Special Services) Regulations, 1925 (*g*), relating to the school medical service for elementary education; the medical inspection, treatment, etc., of children and young persons attending places of higher education; the provision of meals for children attending public elementary schools; elementary schools for blind, deaf, defective and epileptic children; full-time courses of higher education for the latter groups of scholars; nursery schools; the organisation of physical training; and play centres. Art. 3 of the regulations prescribes that an education authority's arrangements should be properly related to the other services of education and public health in the area, and that the arrangements as a whole must form a comprehensive and well balanced scheme for promoting the physical and mental development of all the children in the area. Art. 18 imposes an obligation upon an education authority, at the requirement of a health authority or any two of its members acting on the advice of the M.O.H., to close, or exclude pupils from, "any premises used for the purpose of a special service" with a view to preventing the spread of disease or any danger to health. This appears to cover all special schools, clinics, cleansing stations, etc., provided by an education authority. Whether it includes secondary or high schools, at which medical inspection under Art. 19 of the regulations is usually carried out as a special service, seems doubtful. No provisions, comparable to those contained in Arts. 20 and 23 of the Regulations for Public Elementary Schools (*ante*, p. 359) enabling a local education authority to close schools or to make arrangements for the exclusion of children from them in order to prevent the spread of disease, are made in connection with the special services, but there is nothing expressly prohibiting such arrangements, and the terms of Art. 8 (*supra*) seem to imply that they will be made. Adequate arrangements for medical inspection, supervision and treatment must be made at elementary schools for blind, deaf,

(f) Board of Education, Administrative Memorandum No. 51.
(g) S.R. & O., 1925, No. 835.

defective and epileptic children (Art. 29), and at nursery schools for attending to the health and physical welfare of the children (Art. 34). In a joint memorandum of the M. of H. and the Board of Education (*b*), it is stated that the procedure recommended on the basis of the regulations for public elementary schools is equally applicable to special schools and institutions, with such modifications as the circumstances may make necessary; but that no special provision for secondary schools has been made because the problems of infectious disease seldom arise in an acute form at such schools and, if they do, the governing bodies may be presumed to be fully alive to the importance of the subject. This appears to imply that education authorities may close secondary schools or exclude children from them if such action appears to be reasonably desirable in order to prevent the spread of disease. [940]

Co-ordination between Education and Health Authorities.—From the foregoing paragraphs it will be seen that schools or departments may be closed, or children excluded from school, either by health authorities acting on the advice of, and through, their medical officers of health, or by education authorities with their school medical officers as their advisers and agents. In most county boroughs and such boroughs or urban districts as are education authorities under sect. 3 of the Act of 1921 (*i*), where the M.O.H. is also school medical officer, no difficulty need arise from this duplication of responsibility. The Ministry and the Board have constantly urged that these appointments should be held by one official wherever this is possible. The normal and straightforward procedure under these conditions is for the education committee to obtain the advice of their officer, in his capacity as school medical officer, with regard to any proposal to close a school or department, and to authorise him to exclude, as a matter of routine, children whose condition renders them liable to spread infection or may be detrimental to the health of the other children. There may be confusion, however, and overlapping of agencies, either where the education and health authorities are the same but separate and independent medical officers are responsible to the respective committees, or where, as in smaller boroughs and urban districts, the M.O.H. of the health authority is not the school medical officer of the education authority, which is the county council. It is desirable that the M.O.H., who exercises on behalf of his authority the general powers and duties provided in the P.H.As. for the control of the spread of infection, and the school medical officer, whose function is the care of the health of school children, should each know what the other is doing. In this connection the joint memorandum to which reference has already been made (*see supra*) makes certain suggestions. If the two authorities are one, it will usually be desirable for an order for closure to be issued by the council acting as education authority on the advice of the school medical officer, although the question may ultimately have to be considered from the public health point of view, when the advice of the M.O.H. will be required. As regards the exclusion of individual children, certificates of exclusion will be given by the school medical officer, but as earlier information as to cases of any notifiable disease may be in the hands of the M.O.H., and action

(*b*) Memorandum on Closure of and Exclusion from School, 1927. II.M.S.O.

(*i*) 7 Halsbury's Statutes 131.

should not be delayed, education authorities should authorise managers and teachers to act on his instructions pending the receipt of certificates from the school medical officer. The latter should be issued on intimations received from the M.O.H. In the case of disease not notified the school medical officer's knowledge is likely to be more complete than that of the M.O.H. (*post*, p. 366) and the necessary exclusions will usually be on his initiative. He should inform the M.O.H. of such action where it is likely to have a bearing on the latter's work. Where the health and education authorities are separate bodies, a working arrangement similar to that just described should be arrived at for the exclusion of individual children, and it should be an understanding that the district M.O.H. will never advise closure without the concurrence of the school medical officer. In such areas co-ordination is simplified if the district M.O.H. is also an assistant school medical officer of the county council, an arrangement which has been made with increasing frequency since the passage of the L.G.A., 1929 (k). Where such an administrative arrangement exists certificates of exclusion may conveniently be issued by the district M.O.H. under cover of the county school medical officer. [950]

Policy.—Most of the common infectious diseases reach their highest level of prevalence among children of school age, and the aggregation of children in schools and class-rooms is recognised to constitute one of the means of disseminating infection. The danger may be greatly increased by overcrowding of class-rooms, insufficient ventilation, inadequate cleansing of class-rooms, insufficient water supply and improper drinking facilities, insanitary lavatories, closets and cloak-rooms, the use in common of educational materials and equipment, and possibly by the lowering of resistance to infection because of inadequate heating and imperfect arrangements for drying clothes and foot-wear. The Board of Education therefore urge every local authority to give constant attention to such questions, and the school medical officer is expected to include reference to them in the annual reports which he is required to submit to the Board through the authority (l). His and the M.O.H.'s main preoccupation as regards infection, however, is with infectious persons, since their presence is regarded as a more common source of infection than infected premises or materials. The law, as set out above, enables these officers to initiate and to carry out two distinct types of measure for minimising the spread of infection by school children, viz.: (1) the closure of schools and classes so that, for the time being, they cease to be meeting places of the infective and the healthy, and (2) the exclusion of individual children from school either because they are suffering from an infectious disease or because they are known to have been exposed to it. [951]

School Closure.—The view of the Ministry and the Board is that closure is seldom necessary. In populous areas experience has demonstrated that it either fails entirely to control an epidemic or, at the best, merely postpones its development, because the opportunities for contact outside of school are numerous. Moreover, it suspends the regular inspection of children by teachers, school nurses and medical officers by means of which the early manifestations of infectious disease

(k) See L.G.A., 1923, s. 111; 26 Halsbury's Statutes 265.

(l) The Board of Education (Special Services) Regulations, 1925, Art. 3 (3); S.R. & O., 1925, No. 835.

may be detected and the sufferers placed under isolation and appropriate treatment. In sparsely populated districts, however, temporary school closure may be effective in bringing an epidemic to an end, especially in connection with a disease like measles, which appears rarely to give rise to the carrier state or anomalous forms, and most infective cases of which attending school are therefore ultimately known (see title INFECTIOUS DISEASES, Vol. VII., p. 208). In arriving at a decision as to whether a school or department should be closed, useful information as to the probable number of susceptible children in attendance may be obtained from the records of medical inspection, which should state the infectious diseases from which each child has already suffered and to which he is, therefore, presumably immune. Exceptional circumstances which may justify closure are the occurrence of infectious disease in the teacher's family involving risk to the scholars; the need for extensive cleansing and disinfection, which, however, can usually be arranged at a week-end; or extensive structural alterations for the removal of sanitary defects. Apart from these, closure should be applied only if the continued meeting in school is evidently conducive to infection, if cases of infectious disease continue to occur after every effort has been made to discover the infecting cause and if there is good reason to believe that closure will considerably reduce the likelihood of exposure to infection. Playgrounds should not remain open when a school is closed; but closure of elementary schools need not necessarily involve disuse of a school for other purposes, such as evening classes for the less susceptible adolescents. [952]

Exclusion.—A child suffering from an infectious disease should be excluded from school until there is reasonable ground for believing that he is free from infection, and until any necessary disinfection of the house, articles and clothing has been carried out (see title DISINFECTION, Vol. IV., p. 415). Readmission should not be permitted as a matter of course at the end of the ordinary period of isolation. Medical officers should have in mind the possible continuance, or intermittent recurrence, of infectiousness after a patient has apparently recovered from the disease. The risk of conveying infection extends to any children who may have been exposed to infection and are therefore liable to contract it, and these are usually described briefly as "contacts." Obviously the majority of known contacts are members of a family in which a case of infectious disease has occurred. They are usually excluded from school for a period depending on, and longer than, the incubation period of the disease and commencing from the date of recovery or removal to hospital of the patient and of any disinfection thought necessary. By this means the risk of infecting schools or classes by the attendance of contacts while sickening of the disease is obviated. If, in spite of such exclusions, cases of disease continue to arise as a result of school infection, the source may be found to be mild, unrecognised cases of the disease or carriers of infection, and it may be necessary to exclude other children than home contacts belonging to the same class, or children from a particular locality where the disease is exceptionally prevalent or children who have recently been absent for a short time with illness of an indefinite nature. In such circumstances the practice of the school as regards the use of such common articles as pens, pencils, slates, etc., and its cleanliness, ventilation and spacing of scholars should also come under scrutiny, and the question of a general disinfection of the school or class-room and the teaching materials used in it should be considered. [953]

Methods and Practice. School Closure.—If a health authority require closure of a school, the notice should state the reason for their action, should be signed by their authorised officer or by two of their members and be addressed to the correspondent of the managers of the school. A copy should be sent to the school medical officer. If the notice is signed by two members of the authority it should specifically state that their action has been taken on the advice of the M.O.H. A specified period of closure should be mentioned and this should be brief, since it may be renewed by a second or further notices. Such closure should be regarded as evidence of a serious outbreak of disease, of which a M.O.H. is required to inform the M. of H. forthwith (*m*). If a school medical officer advises closure of a school he should submit a statement in writing to the education authority giving reasons why such action is considered preferable to exclusion of individual children.
[1954]

For the reasons already given (*ante*, p. 362) the occasions upon which a M.O.H. or school medical officer advises closure of a school are rare. The practice of school closure is most effective in areas where there is some system of notification of the disease (*n*), affording prompt information of the earliest cases and so enabling steps to be taken before the epidemic is well established. It is applied for a week or ten days so as to include the period throughout which most of the children known to have been exposed to infection at school may be expected to sicken, e.g., in the case of measles, commencing at the end of a week from the date of exposure. At the end of this period, when the school is reopened, known cases which have occurred in the interim and any contacts with cases are individually excluded. If the infection is one which is known to be transmitted by inanimate objects the school is disinfected during closure. The action is usually taken by the education authority on the advice of the school medical officer, who has previously consulted the local M.O.H., if they are not the same persons. It is customary to make a further order for prolongation of closure only if the epidemic has continued to spread to such an extent and so rapidly that there is grave danger of further spread of infection by attendance at school. If a school has been closed the managers of any Sunday school attended by the children should be asked to take similar action. This cannot be enforced, but individual children may be excluded under sect. 150 of the Act of 1936, and lists of scholars at a Sunday school may be obtained under sect. 151 of that Act, if a case of infectious disease has occurred among them. [1955]

Exclusion.—In practice different procedures are followed as regards different diseases. First intimation of a case of a notifiable disease usually reaches the M.O.H. in the form of a notification, and, as a result of transfer of information, formal exclusion from school, if necessary, is effected by a certificate of the school medical officer issued to the head teacher of the school. A duplicate may usefully be transmitted to the secretary of the education committee or to the school attendance officer, and another retained for future reference. The certificate states the disease for which exclusion is imposed, and indicates that it should endure until cancelled by a readmission cer-

(*m*) Sanitary Officers (Outside London) Regulations, 1935, Art. 17 (7); S.R. & O., 1935, No. 1110.

(*n*) For methods of introducing notification, see title *INFECTIOUS DISEASES*, Vol. VII., pp. 207–211.

tificate. The duplicates in the possession of the school medical officer are a reminder to him of outstanding children to be readmitted and should be regularly scrutinised to ensure that exclusion is not unnecessarily prolonged. Usually the indication for readmission is an intimation through the M.O.H. that the patient has been discharged from hospital or a medical certificate of freedom from infection and of disease. It is commonly the practice to extend the period of exclusion for a further week or fortnight beyond such intimation as an additional precaution against the spread of disease. In the case of those diseases which present bacteriological evidence of infectivity the appropriate laboratory procedure is followed for determining the period of exclusion (*post*, p. 366). [956]

Contacts with cases of a notifiable disease also usually come first under the notice of the M.O.H. as the result of the inquiries which follow upon receipt of a notification. Here again the school medical officer's exclusion certificate, transmitted to the persons mentioned above, preferably leaves the period of exclusion indefinite and determinable by a subsequent readmission certificate, since the contact or other members of the family may contract the disease, or the duration may depend upon an unpredictable period of isolation at home of the patient, or it may be curtailed as the result of bacteriological examination in appropriate cases. With these reservations, arrangements are made to readmit contacts to school at the expiry of a time, called the quarantine period, after the isolation of the patient, which slightly exceeds the incubation period of the particular disease and which therefore varies as between diseases. In practice, isolation usually means removal to hospital, since the homes of children attending public elementary schools rarely permit of complete and continuous segregation of the patient from the rest of the family, but if the home is satisfactory in this respect or if arrangements can be made for any scholars who are home contacts to reside in some other place, the period of quarantine dates from the commencement of isolation of the patient or removal of contacts, as the case may be. If the patient is nursed at home under unsatisfactory conditions of isolation, exclusion of contacts extends throughout the patient's illness and further quarantine dates from the issue of a medical certificate that the patient has ceased to be infectious. While this is the general policy, contacts with certain grave infectious diseases are not excluded as a matter of routine, for the reason that the danger of transmitting these diseases is slight (*post*, p. 366); and, indeed, all rules are subject to modification in the light of individual circumstances which are always taken into consideration. [957]

The transmission of intimations and certificates between district medical officers of health, county school medical officers, school teachers and attendance officers is laborious and time-consuming. Arrangements are therefore sometimes made for its avoidance. A district M.O.H. has no power to exclude a child from school otherwise than under sect. 150 of the Act of 1936, but an understanding may be arrived at between the county and district councils and their officers that school teachers will recognise and support any instructions given by the district M.O.H. to parents that infectious cases or contacts are not to attend school. The efficiency of these arrangements depends largely on the understanding and co-operation of teachers and school attendance officers and their authorisation, if necessary, to exclude children from school on their own responsibility as part of the county council's approved arrangements.

As regards non-notifiable disease, school teachers inevitably play the most important part, since they obtain the earliest information of cases occurring in the persons of families of scholars. The authority's arrangements should make it clear that it is the duty of teachers to seek information as to the reasons for the absence of children, and to exercise reasonable judgment in excluding suspects from school until medically certified as being free from infection. In some areas local power has been obtained to enforce notification to the head teacher by parents of cases of infectious diseases not notifiable to the M.O.H. (o). The school medical officers and nurses, being in frequent touch with schools, are able to help and advise teachers as to the recognition of cases of disease at an early stage. The teachers are informed as to the procedure, the incubation period (*p*) and period of exclusion for cases of, and contacts with, each disease, and are usually supplied with forms on which to intimate to the school medical officer all children absent from school for this reason. As the issue by the school medical officer of certificates under Administrative Memorandum No. 51, justifying the omission of meetings and attendances in calculating average attendance (*ante*, p. 360) ought always to depend upon accurate knowledge of the facts, such intimations are essential even if the school medical officer does not cover the action of the school teachers by a routine exclusion certificate for each individual child. [958]

Exceptions.—It may be repeated that any of the accepted rules of procedure may be varied according to the circumstances of individual cases, but certain regular departures from, or amplifications of, them are worthy of special mention. Some of them are of particular importance in dealing with senior or secondary school children.

Scarlet Fever.—Contacts with cases of this disease who are known by the school medical officer or the M.O.H. to have had the disease already may be allowed to return to school immediately after disinfection.

Diphtheria.—The readmission of a child who has suffered from this disease is sometimes made to depend on a bacteriological report, or reports, of swabs taken from the throat and nose by the school medical staff, irrespective of any certificate of freedom from infection or discharge from hospital. On the other hand, such bacteriological examination of contacts together with medical examinations may be substituted for the normal period of exclusion (two weeks). For this disease, which is exceptionally fatal among young children, exclusion from school individually of all children under five years should be considered if there is any evidence of school infection.

Enteric Fever and Erysipelas.—Exclusion of contacts is not necessary as a rule.

Smallpox.—Recently vaccinated contacts, or any who are known to have had the disease, may be readmitted immediately after vaccination.

Measles.—Exclusion of contacts is usually confined to those attending infant classes and those older contacts who have not previously had the disease. Intimation of measles should always be transmitted to the M.O.H., so that health visitors may advise parents as to the care of the patient and search for cases among children under school age.

Whooping Cough.—The procedure is the same as for measles.

Chicken Pox.—The procedure is the same as for measles, but when smallpox is prevalent every case should be examined medically because of the risk of mistaken diagnosis.

Mumps.—Exclusion of contacts is usually unnecessary.

(o) E.g. Newcastle-under-Lyme Corporation Act, 1937, s. 90.

(p) A tabular statement of incubation periods is included in the Joint Memorandum of the M. of H. and Board of Education (see *ante*, p. 361).

Influenza.—Exclusion of contacts is usually impracticable.

Tuberculosis.—It is not possible to exclude contacts as the manifestation of infection may be long delayed. The occurrence of this disease in a teacher is important from the point of view of the protection of scholars. He or she must abstain from teaching until two medical certificates, stating that the disease is quiescent, have been submitted at intervals of six months. Thereafter subsequent medical certificates of maintenance of health are required after six months and two further yearly periods, even if the teacher has returned to duty. The same procedure applies to caretakers and other members of school staffs. Some relaxation may be permitted for those engaged in open-air schools or sanatoria for tuberculous children. [959]

Sources of Infection.—In addition to the routine procedure which has been outlined, a special medical inspection and frequent visits by medical officers and nurses are made in connection with any outbreak of infectious disease at a school in order to search for missed or anomalous cases, children in the incipient stages of the disease and carriers of infection. These and their home contacts are excluded exactly in the same way as the more definite and obvious cases. The practice of the school as regards the use of common pencils, pens, copy-books and slates is carefully scrutinised and any change of methods or necessary disinfection is arranged. [960]

PRIMARY EDUCATION

See ELEMENTARY EDUCATION.

PRISONS

	PAGE		PAGE
INTRODUCTORY — — — — —	367	PRISON OFFICERS' SUPERANNUA-	370
SALE OF DISCONTINUED PRISON — — — — —	368	TION — — — — —	370
PRISON COMMISSIONERS — — — — —	369	RATING OF PRISONS — — — — —	370
VISITING COMMITTEES OF JUSTICES — — — — —	369	MODEL BYE-LAWS — — — — —	370

Introductory.—At common law, all gaols belonged to the king, though a statute of Henry IV. (a) on committals by justices of the peace recognised the continuance of franchise gaols, such as would have attached to the medieval period jurisdictions. The king's, or common, gaols were, in the main, under the control of the sheriff. Houses of correction under the control of justices, established in 1597 primarily for vagrants, but also used for criminals, were abolished by

(a) 11 Halsbury's Statutes 217.

the Prison Act, 1865 (b). By the Prison Act, 1877 (c), the cost of maintaining prisons was directed to be defrayed out of moneys provided by Parliament, and prisons were vested in and placed under general superintendence of Prison Commissioners, subject to the control of the Secretary of State (Home Secretary). The Prison Act, 1898 (d), empowered the Secretary of State to make rules for the regulation of prisons, previously made by Act of Parliament, while the Prison Commissioners were, as directors of convict prisons, to be assisted in the performance of their duties by inspectors and other officers appointed under sect. 7 of the Act of 1877. Under the Act of 1898, prison rules are made after a draft has been laid before each House of Parliament for not less than thirty days, and the dates on which rules made under the Acts of 1865-1898 come into force are notified in the *London Gazette* (e). The rules included in the footnote below (e) comprise powers and duties of visiting committees to be treated later. [961]

Generally, prisons may be classified as local and convict prisons. The former are for the detention of persons awaiting trial, criminals under sentence of death, prisoners sentenced other than to penal servitude, debtors, persons committed for contempt, etc. They were, until transferred by the Prison Act of 1877 to the management and control of the Prison Commissioners and the Secretary of State, maintained by (local) prison authorities. Convict prisons are those in which persons sentenced to penal servitude are detained. Although since the Act of 1898 both classes of prisons are under the Prison Commissioners, a board of visitors for every convict prison is to be appointed with powers analogous to those of the visiting committees of justices for local prisons.

By the Prison Act, 1877, prisons and their furniture and effects, at that time belonging to (local) prison authorities (f) were to vest in the Secretary of State, but by sect. 48 of the same Act (g) the legal estate in every prison to which that Act applies, and in the site and land belonging to it, is deemed to be vested in the Prison Commissioners and not in the Secretary of State; but the Prison Commissioners can dispose of a prison and site in such manner as the Secretary of State, with the consent of the Treasury, directs. By sect. 38 of the Act of 1877, the Secretary of State can, by order, discontinue a prison vested in him. [962]

Sale of Discontinued Prison.—When such a prison is "discontinued" the Secretary of State must serve notice on the prison authority (f) to whom the prison originally belonged, that he will, within any time not less than six months from the date of service of the

(b) S. 56; 13 Halsbury's Statutes 334.

(c) 13 Halsbury's Statutes 337.

(d) *Ibid.*, 369.

(e) See the following: S.R. & O., 1899, No. 321, made for convict prisons; S.R. & O., No. 322 (for local prisons) and supplementary rules (for convict prisons); S.R. & O., 1905, Nos. 74, 75; 1911, No. 304; 1915, No. 300; 1922, No. 360; 1923, No. 757; 1924, No. 985; 1927, No. 243; and (for local prisons) S.R. & O., 1907, No. 617; 1908, No. 282; 1909, No. 885; 1910, No. 470; 1915, No. 299; 1923, No. 756; 1924, No. 984; and 1927, No. 243.

(f) "Prison authority" is defined by s. 5 of the Prison Act, 1865; 13 Halsbury's Statutes 327, and includes the council of a municipal borough in respect of any prison belonging to them.

(g) 13 Halsbury's Statutes 348.

notice, convey the prison to that authority, but without any furniture or effects. The amount of the consideration is to be a payment by the authority into the Exchequer of £120 for each prisoner for whom cell accommodation was provided when the Act of 1877 was passed, and repayment by the authority of any compensation it may have obtained from the Exchequer by reason of having provided a prison of its own in excess of the accommodation required. The authority can then sell or dispose of the prison as it thinks fit. Should, however, the authority decline to accept the offer of the Secretary of State, or fail to return the sum as compensation mentioned above, the Secretary of State can sell the prison, pay the expenses of the sale, and the sum before-mentioned, and pay the remainder to the former prison authority.

[963]

Prison Commissioners.—The appointment of Prison Commissioners is governed by sect. 6 of the Prison Act, 1877 (*h*). They are appointed by the king under his sign manual, on the recommendation of the Secretary of State, and are not at any one time to exceed five. They hold office during His Majesty's pleasure. The king may also appoint persons to fill vacancies caused by death or otherwise, on the recommendation of the Secretary of State, who also appoints one of them to be chairman (*h*). They may be paid, out of moneys provided by Parliament, such salaries as the Secretary of State, with the consent of the Treasury, may determine (*i*). Inspectors are to be appointed by the Secretary of State, and other officers by the Commissioners themselves, subject to the approval of the Secretary of State (*k*). Their duties, which include the general superintendence of prisons under the Act of 1877, subject to the control of the Home Secretary, are set out in sect. 9 of that Act, but they must in the exercise of their jurisdiction conform to any directions given to them from time to time by the Secretary of State. It is their duty, at such times as they are so directed, to furnish reports as to the condition of prisons and prisoners within their jurisdiction, and their annual report must be laid before both Houses of Parliament (*l*). This report must, among other things, state the various manufacturing processes carried out in each of the prisons within the jurisdiction of the commissioners, and give particulars as to the kind and quantities of the same, and other matters likely to afford information to Parliament. They must also submit a yearly return of all punishments inflicted, and the offences for which such punishments were inflicted (*m*). [964]

Visiting Committees of Justices.—The appointment of these committees is governed by sect. 13 of the Prison Act, 1877 (*n*), while sect. 14 provides for their duties. (See also the prison rules mentioned above.) Apart from these visiting committees, any justice of the peace, having jurisdiction in the place either in which the prison is situate or where the offence was committed, may at any time visit a prison and make observations on the condition of the prison or abuses therein in the visitor's book kept by the gaoler, whose duty it is to call the attention of the visiting committee to them at their next visit (*o*).

[965]

(*h*) S. 6; 13 Halsbury's Statutes 338.

(*i*) *Ibid.*, s. 8.

(*h*) *Ibid.*, s. 7.

(*l*) *Ibid.*, s. 11.

(*m*) *Ibid.*, s. 12.

(*n*) 13 Halsbury's Statutes 340.

(*o*) Prison Act, 1877, s. 15.

Prison Officers' Superannuation.—The Prison Act, 1877, and Prison (Officers Superannuation) Acts, 1878, 1886 and 1893, provided for the superannuation of officers who were attached to prisons before April 1, 1878, and were by the Act of 1877 declared to become civil servants of Her Majesty. Prison officers who joined between April 1, 1878, and September 21, 1900, come within the provisions of the Superannuation Acts of 1859, 1887 and 1892 (*p*), as amended by the Superannuation (Prison Officers) Act of 1919 (*q*), and S.R. & O., 1920, Nos. 2173, 2332, and 1920, No. 18. Male officers entering the service before the Superannuation Act, 1909 (*r*), could elect to come under that Act, and officers entering after September 20, 1909, receive superannuation under the last-mentioned Act only, as amended by S.R. & O., 1902, Nos. 2173, 2332, and 1919, No. 18. [966]

Rating of Prisons.—Prisons, being hereditaments occupied by or on behalf of the Crown, are exempt from rates, but, if any contribution is made by the Treasury in respect of them in aid of rates, the value upon which the contribution is computed must be entered in the valuation list (*s*). [967]

Model Bye-Laws.—The model bye-laws with respect to new streets framed under sect. 157 of the P.H.A., 1875 (*t*), contained a clause exempting from their operation prisons and buildings for the use of prison officers, but such a clause is omitted from the new model bye-laws issued in July, 1937, for the purposes of sect. 61 of the P.H.A., 1936 (*u*), as being superfluous. It was decided in *Gorton Local Board v. Prison Comrs.* (1887) (*a*) that such bye-laws did not bind the Prison Commissioners, inasmuch as they held the prison on behalf of the Crown. By sect. 341 of the Act of 1936 (*b*), any provisions of that Act can be applied by agreement in relation to buildings, *inter alia*, belonging to a Government department, but the special character of prison buildings renders it unlikely that such agreements will be made. [968]

- (*p*) 16 Halsbury's Statutes 170, 560, 680.
- (*q*) 13 Halsbury's Statutes 274.
- (*r*) 16 Halsbury's Statutes 741.
- (*s*) R. & V.A., 1925, s. 64 (3); 14 Halsbury's Statutes 684.
- (*t*) 18 Halsbury's Statutes 680.
- (*u*) 29 Halsbury's Statutes 372.
- (*a*) Reported at, [1904] 2 K. B. 165, n; 42 Digest 600, 1050.
- (*b*) 29 Halsbury's Statutes 535.

PRIVATE ACTS

	PAGE	PAGE
HISTORICAL INTRODUCTION	— 371	CONSTRUCTION OF PRIVATE ACTS —
PUBLIC AND PRIVATE ACTS	— 371	REPEALS — — — — — 374
PRIVATE ACTS AND LOCAL ACTS	— 373	

See also titles :

ACT OF PARLIAMENT ;

ADOPTIVE ACTS ;

BILLS, PARLIAMENTARY AND PRIVATE ;

INTERPRETATION OF STATUTES ;

PARLIAMENTARY AGENTS ;

PROVISIONAL ORDERS ;

STATUTORY RULES AND ORDERS.

Historical Introduction.—Until 1798 no official distinction was drawn between public and private Acts, but after that year, as a result of joint resolutions of the two Houses in 1796 (*a*), the statutes were divided into (1) public general Acts, (2) local and personal Acts of a public nature and (3) private and personal Acts, the two former classes being printed in separate volumes by the King's printer. A short history of the classification of statutes from then until the present day will be found under the title ACT OF PARLIAMENT, Vol. I., p. 63. The present classification is as follows : (1) public general Acts ; (2) local Acts ; (3) private Acts printed by the King's printer ; (4) private Acts not so printed. When cited they are distinguished thus : public general Acts have their chapters in Arabic characters, as 25 & 26 Geo. 5, c. 4 ; local Acts in Roman numerals, as 25 & 26 Geo. 5, c. iv ; and private Acts in italicized Arabic figures, as 25 & 26 Geo. 5, c. 4. [969]

Public and Private Acts.—The term "private Act" in its widest meaning includes a local Act as well as a private Act in the Statute Book sense, that is to say any statute except a public general Act ; and here we can draw our first distinction. A public general Act is a measure of public policy which interests and extends to the whole or a large proportion of the whole community (*b*) ; in passing a public general Bill, Parliament is exercising a purely legislative function on the motion of a member of the House in which the Bill is introduced, and except for the enacting formula and the words of the Royal Assent no trace remains of anything in the nature of a petition.

In the case of an Act the Bill for which was a private Bill the formula is, "May it therefore please your Majesty that it may be enacted and be it enacted by the King's Most Excellent Majesty, etc." (indicating the "petitory" character of the procedure),

(*a*) 52 Com. Journ., p. 413.

(*b*) For example an Act extending to the whole of Wales, such as the Welsh Church Act, 1914, is a public general Act. Until 1888 all London Acts were treated as public general Acts, and some still are, e.g. the P.H. (London) Act, 1936 ; 26 Geo. 5 & 1 Edw. 8, c. 50 ; 30 Halsbury's Statutes 437.

whereas if the Bill had been a public Bill the formula would run "Be it enacted by the King's Most Excellent Majesty," etc. On looking through the volumes of private Acts it is always possible to discover whether the Bill for any particular Act was a private Bill or a public Bill from this difference in the enacting clause. [970]

Legislation is continually required for the benefit of a particular locality, a particular body of persons or even an individual; such legislation is carried out by private Act, and since proposals that will benefit a relatively small proportion of the community might easily prejudice the remainder, Parliament assumes a judicial function and not only hears opposition, as it were *inter partes*, but insists that a private Bill be introduced by petition and sustained by the promoters throughout its course in accordance with the standing orders. The promotion of and opposition to a private Bill is in many ways comparable to a private lawsuit, the result of which, however, is embodied in an act of legislation; it by no means follows that every private Bill is opposed, but, even so, the procedural differences between public and private Bill legislation are preserved; it must be borne in mind, however, that private Bills coming before either House are subject to the same rules of debate and are read the same number of times as public Bills. [971]

Where a measure, though of a local or private nature, is of sufficiently general importance to be introduced as a public Bill it is referred to as a "hybrid Bill" and opposition is heard in committee as if the Bill were a private one and standing orders must be complied with, but the Bill retains its public character. A recent example is the London Passenger Transport Act, 1933. For private Bills, see, generally, title **BILLS, PARLIAMENTARY AND PRIVATE**, Vol. I., p. 66.

Moreover, all Bills introduced by the Government affecting private interests are hybrid Bills; the reason being that private Bills must be introduced on petition and the Crown cannot petition itself; the Government, therefore, if it wants to introduce a measure of a private Bill nature must introduce it as a public Bill. For instance, a Post Office Sites Bill may be said to be public in that it is introduced for public purposes, but can hardly be called general; it merely authorises the compulsory acquisition of certain specified pieces of land as sites for post offices. It is because they are promoted by Government departments that Bills to confirm provisional orders—which are indistinguishable in effect from private Bills—are introduced as public Bills (c).

Occasionally questions of great nicety arise as to whether a Bill should be introduced as a public Bill or a private Bill (d). [972]

The fact that a measure was introduced as a public or private Bill is not strictly relevant when it has to be decided whether it is a public or a private Act; the question depends upon the substance of the enactment, even if it contains a section declaring it to be a public Act (e). The distinction, however, is better drawn not so much between a public and a private Act as between a public general Act on the one hand and a local or personal Act on the other; in the words of **BOWEN, L.J.**, in *R. v. L.C.C.* (f), "it is 'general' and not 'public'

(c) Provisional Orders are dealt with under a separate title.

(d) See **ERSKINE MAY'S PARLIAMENTARY PRACTICE** (13th ed.), pp. 657—670.

(e) **DAWSON v. PAPER** (1847), 5 Hare, 415; 42 Digest 734, 1689.

(f) (1893), 63 L. J. (Q. B.) 4, at p. 8; 33 Digest 106, 709.

which is opposed to 'local and personal'—because a local and personal Act may be public without losing its character of local and personal." In this case the Court of Appeal held that a section of a local nature even though it formed part of a public general Act was a "local and personal Act" within sect. 59 (6) of the L.G.A., 1888 (g), and could accordingly be amended by an order of the L.C.C.; it was emphasized that the contents of the provision in question were the only consideration and that whether the Act was passed as a public Bill or whether its main objects were of a public nature was irrelevant (h). [1973]

Private Acts and Local Acts.—It will be seen, then, that private Acts in the sense hitherto employed in this article may be sub-divided into local Acts and private Acts strictly so-called; the former include public Acts of a local nature, and are passed as a rule for the benefit of local authorities, public utility undertakings or trading companies requiring powers beyond the scope of the Companies Act, 1929; local Acts are published annually in a separate volume from the public general Acts, together with any private personal Acts passed during the year that have to be printed (i). Private Acts that are printed by the King's printer are almost invariably Estate Acts or Inclosure Acts; those that remain officially unprinted deal with purely individual matters such as names, naturalisation and divorce. [1974]

Construction of Private Acts.—It must be remembered that a private Act—and this term must henceforth include a local Act—is no more than statutory confirmation of the promoters' petition and the language used must, to a great extent, be regarded as the promoters' own; as a rule, therefore, a private Act is construed against the promoters (j). Further, full consideration will have been given to the rights of individuals and of the public at large, while the Act was a Bill before Parliament, and a construction will not be adopted which will infringe existing rights without provision for compensation unless the intention is clearly expressed; if private rights are infringed there is a presumption that compensation will be payable (k), and any such interference will be strictly limited to the immediate purposes of the Act in question (l). On the other hand, saving or protective clauses, since they are usually the result of a private arrangement with the promoters and have little to do with the main purpose of the Act, are not construed so strictly against the promoters, nor should they influence the construction of the general parts of the Act (m). And where a form of contract appears, for example, in a Schedule, it

(g) 10 Halsbury's Statutes 735; now materially reproduced in s. 140 (2) of L.G.A., 1933; 26 Halsbury's Statutes 388.

(h) In *R. v. L.C.C.* (1893), 63 L. J. (Q. B.) 4; 33 Digest 106, 700, the Act 10 Anne, c. 11, inasmuch as it affected Westminster Abbey and Greenwich Hospital was held without question to be a public general Act; it was s. 4, dealing with the purchase of burial grounds for certain churches, that was in dispute.

(i) See title ACT OF PARLIAMENT, Vol. I., at p. 64.

(j) *Great Northern, Piccadilly and Brompton Rail. Co. v. A.-G.*, [1909] A. C. 1, 6; 42 Digest 744, 1694.

(k) *A.-G. v. Horner* (1884), 14 Q. B. D. 245 (C.A.) per BRETT, M.R., at p. 257; 42 Digest 743, 1679.

(l) *Ct River Wear Comrs. v. Adamson* (1877), 2 App. Cas. 743; 36 Digest 105, 705.

(m) *East London Rail. Co. v. Whitechurch* (1874), L. R. 7 H. L. 81, 89; 42 Digest 681, 927; *West Derby Union v. Metropolitan Life Assurance Society*, [1897] A. C. 647, 656; 42 Digest 659, 680.

must be interpreted without bias according to the law of contract (*n*). A general Statute intended for incorporation by reference in private Acts, for example, the Lands Clauses Consolidation Act, 1845 (*o*), since it forms part of the incorporating Act, must be read in the light of the latter if circumstances give rise to any difficulty in its application (*p*). [1975]

Repeals.—A private Act is not repealed, nor are rights and obligations arising thereunder affected, by a subsequent public general Act, unless the latter Act plainly states that the earlier is to be repealed (*q*), or specifically refers to the provisions or interests concerned (*r*) or shows a clear intention to substitute new rights in the locality for those enjoyed under the previous Act (*s*). There is no rule which prevents the amendment or repeal of a public general Act by later private legislation (*t*), although objections to this have been made on the ground of the inconvenience caused by an amending Act not appearing in the volume of public general Acts. Any such proposed amendments or repeals are strictly scrutinised, however, before the measure is allowed to go forward as a private Bill. [1976]

(*n*) *Davis & Sons v. Taff Vale Rail. Co.*, [1895] A. C. 542, 552 ; 42 Digest 740, 1636.

(*o*) 2 Halsbury's Statutes 1113.

(*p*) *Great Western Rail Co. v. Swindon and Cheltenham Rail. Co.* (1884), 9 App. Cas. 787, 808 ; 42 Digest 673, 847.

(*q*) For a recent illustration, see s. 24 (5) of the P.H.A., 1936, which runs as follows : " So much of any local Act as relates to the liability for the repair of a single private drain connecting two or more houses with a public sewer is hereby repealed " ; 29 Halsbury's Statutes 945.

(*r*) " The Appellants' Acts of 1885 and 1892 are private Acts in the sense that they confer special rights and impose special obligations upon a particular company for special purposes ; and to hold that a subsequent general statute, the application of which might seriously interfere with the rights granted by special legislation to the appellants, and might prevent them from fulfilling statutory obligations, can have been intended to over-ride the special legislation would be contrary to sound and well established principles " : judgment of the Privy Council in *Esquimalt Waterworks Co. v. Victoria City Corpn.*, [1907] A. C. 499 ; 42 Digest 768, 1954.

(*s*) There are dicta to this effect in *Sion College v. London Corpns.*, [1900] 2 Q. B. 581, at p. 586 (affirmed [1901] 1 K. B. 617, C.A.) ; 38 Digest 475, 349) and in *Associated Newspapers, Ltd. v. London City Corpns.*, [1913] 2 K. B. 281 ; Digest (Supp.), both cases being decided on other grounds.

(*t*) Mr. Speaker Peel, 30 Parl. Deb., 4, s. 807.

PRIVATE BILL

See BILLS, PARLIAMENTARY AND PRIVATE ; PROVISIONAL ORDERS.

PRIVATE IMPROVEMENT EXPENSES

	PAGE		PAGE
PRELIMINARY - - - - -	375	RECOVERY OF EXPENSES, ETC. - - - - -	379
PRIVATE STREET WORKS - - - - -	376	LIMITATION OF LIABILITY OF CERTAIN OWNERS - - - - -	379
METHODS OF RECOVERING PRIVATE IMPROVEMENT EXPENSES UNDER THE P.H.A., 1875, AND THE P.H.A., 1925 - - - - -	377	POWER OF LOCAL AUTHORITY TO GRANT CHARGING ORDERS - - - - -	380
RECOVERY OF EXPENSES UNDER THE P.H.A., 1936 - - - - -	378	WORKS IN RESPECT OF WHICH EXPENSES ARE RECOVERABLE UNDER P.H.A., 1936 - - - - -	380
POWER TO MAKE A CHARGE IN RESPECT OF ESTABLISHMENT EXPENSES - - - - -	379	RECOVERY OF EXPENSES UNDER THE HOUSING ACT, 1936 - - - - -	381
		LONDON - - - - -	381

See also titles : CHARGING ORDERS (HOUSING) ; PRIVATE STREETS.

Preliminary.—This title will deal with the method by which expenses incurred by the local authority in respect of works of private improvement may be recovered, the purposes for which private improvement expenses may still be declared to be such, and the method by which they are levied.

A number of enactments scattered over the various P.H.As. (a) provide in effect that the local authority may serve notice upon the owner (or in some cases the occupier) of premises, calling upon him to execute works in the nature of private improvement in order to remedy some defect, and that if the person served fails to do so the authority may do the work themselves and recover the expenses from him in manner provided, or may by order declare them to be private improvement expenses. In these enactments substantial differences in form are found, and for the sake of simplicity and clarity the procedure for requiring the owner to execute works and enabling him to appeal is by the P.H.A., 1936, made uniform. This is effected by sect. 290, and by the repeal and re-enactment in different form of the sections referred to (with the exception of provisions relating to private street works (b)). [977]

Uniformity of procedure for recovery of the expenses in such cases and also in cases where the authority incurs expenses by agreement is also provided for. This is effected by sect. 291 of the 1936 Act (c) which takes the place of sect. 257 of the Act of 1875 (d) and sect. 77

(a) *E.g.* P.H.A., 1875, ss. 28, 36, 41, 62, 150 ; 13 Halsbury's Statutes 635 *et seq.* ; P.H.As. Amendment Act, 1890, s. 19 ; 13 Halsbury's Statutes 831 ; Private Street Works Act, 1892, ss. 12, 13 ; 9 Halsbury's Statutes 200, 201 ; P.H. (Water) Act, 1878, s. 3 (4) ; 20 Halsbury's Statutes 242 ; P.H.A., 1907, ss. 40, 45, 46, 74 ; 13 Halsbury's Statutes 926 *et seq.*

(b) *I.e.* P.H.A., 1875, s. 150 ; 13 Halsbury's Statutes 686 ; Private Street Works Act, 1892, s. 12 ; 9 Halsbury's Statutes 200.

(c) P.H.A., 1936 ; 29 Halsbury's Statutes 511.

(d) 13 Halsbury's Statutes 732 ; see *infra*.

of the Act of 1925 (*e*), which are repealed except so far as they may be material for any purpose of any unrepealed enactment in the P.H.A., 1875, or any Act directed to be construed therewith (*f*). The procedure relating to private improvement expenses provided for in the earlier Acts was seldom used and has not been reproduced in the Act of 1936, and is abandoned as respects matters covered by the Act, so that whilst sect. 291 of the Act of 1936 largely reproduces sect. 257 of the P.H.A., 1875, as amended by sect. 77 of the P.H.A., 1925 (*g*), the language required considerable alteration, and it contains several amendments to which attention will be drawn (*h*). It should be emphasised, however, that with regard to subject matters not covered by the Act of 1936, notably the recovery of private street works expenses, the procedure provided in the earlier Acts can still be applied. It is proposed, therefore, before dealing with the recovery of expenses under the Act of 1936, to treat of the procedure relating to private improvement expenses as still applicable to the recovery of private street works expenses, but this will be done briefly as it is more fully treated under the title *PARTIAL STREETS*, *post* (*i*). [978]

Private Street Works (*k*).—Where an urban authority has executed private street works in default of compliance by the owner with notice under the P.H.A., 1875, they may in a summary manner recover from the owners in default the expenses incurred by them in so doing, according to the frontage of the respective premises, and in such proportion as is settled by the surveyor or (in the case of dispute) by arbitration, or they may by order declare the expenses so incurred to be private improvement expenses (*l*). In urban districts in which the Private Street Works Act, 1892 (*m*), has been adopted (*n*), where any private street works have been completed and the expenses ascertained, the sums finally apportioned and interest are (unless successfully objected to) recoverable from the owners of the premises affected thereby, summarily or as a simple contract debt by action in a court of competent jurisdiction, or in the same manner as private improvement expenses are recoverable under the P.H.A., 1875, including the power to declare any such expenses to be payable by instalments (*o*). The premises remain charged to the like extent and effect as under sect. 257 of the P.H.A., 1875 (*p*), with the sum finally apportioned and interest (*q*). [979]

(*e*) 18 Halsbury's Statutes 1151; see *infra*.

(*f*) P.H.A., 1936, s. 346 and Sched. III., Part 1 (1); 20 Halsbury's Statutes 541, 545.

(*g*) See *infra*.

(*h*) Reference should be made to the Second Interim Report of the Local Government and Public Health Consolidation Committee, Cmnd. 5039, pp. 74 and 124.

(*i*) Reference may usefully be made to the extensive and luminous notes in Lumley's Public Health (10th ed.), at pp. 503 *et seq.* and 567 *et seq.* and the cases there quoted.

(*j*) See title *PARTIAL STREETS*.

(*l*) P.H.A., 1875, s. 150; 18 Halsbury's Statutes 686. For forms of order and notice thereof, see 12 Ency. Forms 542, 543.

(*m*) 9 Halsbury's Statutes 193.

(*n*) Private Street Works Act, 1892, ss. 2, 3. The P.H.A., 1875, s. 150, is not in force where this Act has been adopted.

(*o*) Private Street Works Act, 1892, ss. 12, 14; 9 Halsbury's Statutes 200, 202.

(*p*) See *infra*.

(*q*) Private Street Works Act, 1892, s. 15; 9 Halsbury's Statutes 201.

Methods of Recovering Private Improvement Expenses under the P.H.A., 1875, and the P.H.A., 1925.—There are two methods of recovering private improvement expenses :

- (i.) By levying upon the occupier of the premises a private improvement rate of such an amount as will be sufficient to discharge such expenses and interest (*r*) within such a period not exceeding thirty years as the local authority in each case determine. The occupier and a landlord who is himself liable to pay a rent for the premises, and holds them for a term of which less than twenty years is unexpired, may each deduct a certain proportion of the rate from the rent. If the premises become unoccupied the rate or so much as remains unpaid becomes a charge on and payable by the owner for the time being of the premises so long as they remain unoccupied (*s*). Provision is also made for the redemption of private improvement rates before the expiration of the full period (*t*) ; or
- (ii.) By declaring the expenses to be payable by annual instalments within a period of thirty years with interest at such a rate as the Minister of Health may from time to time fix (*u*). Such instalments are recoverable in a summary manner from the owner or occupier, and like deductions by the occupier are allowed as in the case of a private improvement rate (*a*).

The local authority must decide in the first instance which course they will adopt, but this does not affect the right to enforce the charge hereinafter referred to, at any rate in respect of payments due and in arrear (*b*). There is an alternative remedy for the recovery of demands under £50 by proceedings in the county court (*c*). [980]

Private improvement expenses are a charge on the premises as from the date of the completion of the works (*d*), and action can therefore be taken against the owner for the time being, although he was not owner when the work was completed and although the local authority had omitted to enforce their summary remedy against the then owner (*e*). The charge is enforceable by action commenced within twelve years after the date of the completion of the works (*f*).

A person aggrieved by the decision of the local authority declaring expenses incurred in works of private improvement to be private

(*r*) Interest will be at such rate as the M. of H. may fix (P.H.A., 1925, s. 77; 13 Halsbury's Statutes 1151). As from April 1, 1934, the rate is fixed at 4 per cent. per annum. See M. of H. (Rate of Interest on Private Improvement Expenses) Order, 1934 (S.R. & O., No. 2741).

(*s*) P.H.A., 1875, ss. 213, 214; 13 Halsbury's Statutes 715, 716.

(*t*) *Ibid.*, s. 215.

(*u*) See note (*r*), *supra*. For form of declaration, see 12 Ency. Forms 543. A form of agreement to pay these expenses by instalments may be adapted from 12 Ency. Forms 572.

(*a*) P.H.A., 1875, s. 257; 13 Halsbury's Statutes 732. The proceedings must be taken within six months from demand, see Summary Jurisdiction Act, 1848, s. 11; 11 Halsbury's Statutes 278.

(*b*) *Wilson v. Bolton Corp.* (1871), L. R. 7 Q. B. 105; 26 Digest 535, 2352.

(*c*) P.H.A., 1875, s. 261; 13 Halsbury's Statutes 734.

(*d*) *Ibid.*, s. 257. See *Tottenham Local Board of Health v. Rowell* (1880), 15 Ch. D. 378; 26 Digest 536, 2353; *R. Allen and Driscoll's Contract*, [1904] 2 Ch. 226; 26 Digest 537, 2361.

(*e*) *Sunderland Corp. v. Alcock* (1892), 51 L. J. (Ch.) 546; 26 Digest 537, 2363.

(*f*) Real Property Limitation Act, 1874; 10 Halsbury's Statutes 466.

improvement expenses may send a memorial to the Minister of Health within twenty-one days of the receipt by him of notice of the decision of the local authority (g). [981]

Recovery of Expenses under the P.H.A., 1936 (h).—Where a local authority (i) have incurred expenses for the repayment of which the owner of premises (k) in respect of which expenses were incurred is liable either under the Act of 1936 or any enactment repealed thereby or by agreement with the authority, those expenses with interest from the date of the service of the demand may be recovered either from the person who was the owner at the date when the works were completed or from the owner at the date when the demand for expenses was served (l).

In most cases these two persons will be the same, but change of ownership may occur between the two dates, and in that case it may sometimes be convenient for the authority to recover from the first owner and sometimes from the second. From the point of view of the owners the alternative right of recovery need involve no inconvenience, since the purchaser has notice of the prospective liability, and the position as between him and his vendor is covered in every properly drawn contract of sale. As from the date of the completion of the works the expenses and accrued interest are until recovered a charge on the premises and all estates and interest therein (m). [982]

The local authority may declare the expenses to be payable with interest by instalments (n) within a period not exceeding thirty years, and such instalments may be payable at any fixed interval and not merely at annual intervals, this having been found convenient for owners. The instalments may be recovered from either the owner or the occupier, who may, unless he has contracted out (o), deduct the amount from his rent, provided that the local authority have given him notice not to pay his rent without deducting the sum demanded (p).

A local authority who have served a demand for the whole cost may at any time adopt the alternative procedure of declaring any unpaid balance of expenses and accrued interest to be payable by instalments, provided that the period of repayment shall not extend beyond thirty years from the service of the first demand for the expenses (q). The Minister of Health is to fix a maximum rate of interest chargeable in

(g) P.H.A., 1936, s. 268; 13 Halsbury's Statutes 730. For form of Memorial, see 12 Eney, Forms 546.

(h) P.H.A., 1936, s. 291; 29 Halsbury's Statutes 511 (reproducing with amendments P.H.A., 1936, s. 257, as amended by P.H.A., 1925, s. 77). See Second Interim Report of Local Government and Public Health Consolidation Committee, Cmd. 5059, p. 124. Reference may usefully be made to the notes in Lumley's Public Health (11th edn.) at pp. 588 *et seq.*

(i) For definition of "local authority," see P.H.A., 1936, s. 1; 29 Halsbury's Statutes 322.

(k) For definition of "owner," "premises" and "enactment," see *ibid.*, s. 345 (1).

(l) *Ibid.*, s. 291 (1); 29 Halsbury's Statutes 511.

(m) *Ibid.* The words "until recovered" would seem to mean wholly recovered. If part only is recovered by summary proceedings or by action the remainder appears to be a charge on the premises.

(n) *Senate* this does not destroy the charge as the expenses become a charge immediately and the declaration may be made at any time, but the local authority would presumably be prevented from enforcing the charge as a whole.

(o) See *Payne v. Burridge* (1844), 12 M. & W. 727; 31 Digest 309, 4530; *Sweet v. Seager* (1857), 2 C. B. (N. S.) 119; 31 Digest 305, 4496.

(p) P.H.A., 1936, s. 291 (2); 29 Halsbury's Statutes 511.

(q) *Ibid.*

respect of expenses, and the local authority have power within this maximum to adopt such rate as they think fit (*r*). This protects the owner whilst giving to the local authority a certain amount of discretion. For the purpose of enforcing a charge a local authority is given all the powers and remedies given by the Law of Property Act, 1925 (*s*), and otherwise, as if they were mortgagees by deed having powers of sale and lease, of accepting surrenders of leases and of appointing a receiver. The charge must be registered as a local land charge (*a*). [1983]

Power to make a Charge in Respect of Establishment Expenses.—A local authority may recover a sum not exceeding five per cent. of the expenses incurred by them as establishment charges in connection with works executed in default of or on behalf of owners or occupiers (*b*). [1984]

Recovery of Expenses, Etc.—Sect. 261 of the P.H.A., 1875 (*c*), enabled sums recoverable by the local authority summarily to be recovered at their option in the county court if they were below £50 (*d*). In cases falling within the provisions of the P.H.A., 1936, this is now extended, and any sum which a council (*e*) are entitled to recover under the Act and with respect to the recovery of which provision is not made by any other section of the Act (*f*) may be recovered either summarily as a civil debt or as a simple contract debt in any court of competent jurisdiction (*g*). This introduces the normal county court limit of jurisdiction (£100). [1985]

Limitation of Liability of Certain Owners.—Where a council (*h*) claim to recover any expenses under the Act of 1936 from a person as being the owner when the expenses were incurred, and that person proves that he receives the rent as agent or trustee for someone else and has not had in his hands since the service of the demand upon him sufficient money to discharge the amount, his liability is limited to the amount which he has had in his hands, the council being enabled to recover any unpaid balance from the person on whose behalf the agent or trustee receives the rent (*i*). [1986]

(*r*) P.H.A., 1936, s. 291 (3). *Sembler* they may demand a higher rate of interest than that at which they can borrow, see *North British Rail. Co. v. Holme Cultram Local Board* (1889), 54 J. P. 86, D. C.; 26 Digest 536, 2356.

(*s*) Ss. 90—109; 15 Halsbury's Statutes 270 *et seq.*

(*a*) Land Charges Act, 1925, s. 15 (4); 15 Halsbury's Statutes 530, see also P.H.A., 1936, s. 329; 29 Halsbury's Statutes 530. See title LOCAL LAND CHARGES.

(*b*) *Ibid.*, s. 202. A similar power is given in s. 9 (2) of the Private Street Works Act, 1892; 9 Halsbury's Statutes 199, and has also been conferred on some local authorities by local Acts.

(*c*) 18 Halsbury's Statutes 734.

(*d*) See *ante*, p. 377.

(*e*) This includes "county" and "parish" councils, as well as the local authorities under the Act defined in s. 1.

(*f*) S. 298. *Sembler* this does not prevent the application of the section to cases to which s. 291 is applied, that section having provided that the authority may recover and that the sum shall be a charge.

(*g*) See the Summary Jurisdiction Act, 1879, ss. 6, 35; 11 Halsbury's Statutes 325, 342. The complaint must be within six months of service of the demand, see Summary Jurisdiction Act, 1848, s. 11; 11 Halsbury's Statutes 278, and P.H.A., 1936, s. 293; 29 Halsbury's Statutes 512, replacing P.H.A., 1875, ss. 251, 257, 261; 13 Halsbury's Statutes 730, 732, 734.

(*h*) As to meaning of "council," see *supra*.

(*i*) P.H.A., 1936, s. 294; 29 Halsbury's Statutes 513. This section is new and meets the position created by the decision in *Wattie v. Battersea Corp.*, [1929] 2 K. B. 63; Digest (Supp.).

Power of Local Authority to Grant Charging Orders.—When works have been completed under the Act of 1936 upon a requirement by the authority, the person executing the works, or any person who has advanced money to enable them to be executed, may apply to the authority for a charging order, and the authority, if satisfied as to the due execution of the works and as to the amount of the expenditure or as to the sum advanced (if any) may make an order (*k*) accordingly, charging the premises and all estates and interests therein with an annuity to repay the amount expended or advanced as the case may be. The annuity charged shall be such sum as the authority may determine in respect of each £100 or fraction thereof, and be payable half-yearly for a term of thirty years, provided that the Minister of Health may from time to time by order fix the maximum sum to be charged in respect of £100 (*l*). The charge is registerable as a local land charge (*m*), but is not required to be deposited with the clerk of the peace for the county. A charge created or arising under this provision has priority over one under the Housing Acts (*n*). [987]

Works in Respect of which Expenses are Recoverable under the P.H.A., 1936.—Expenses may be recovered in manner provided by sects. 291 to 295 of the P.H.A., 1936 (*o*), which have been incurred by the local authority in regard to: (i.) the removal or alteration of works over sewers (*p*) ; (ii.) making satisfactory provision for the drainage of a building (*q*) ; (iii.) remedying defective soil pipes (*r*) ; (iv.) providing sufficient or remedying defective closet accommodation (*s*) ; (v.) preventing soakage or overflow from cesspools (*t*) ; (vi.) paving and drainage of yards and passages (*u*) ; (vii.) shoring up dangerous or dilapidated buildings (*a*) ; (viii.) providing certain buildings with means of ingress and egress, passages, etc. (*b*) ; (ix.) providing means of escape from fire in certain cases (*c*) ; (x.) removing

(*k*) A form of order will no doubt be prescribed by the Minister of Health under P.H.A., 1936, s. 283 (2) ; 29 Halsbury's Statutes 505.

(*l*) P.I.L.A., 1936, s. 295. This section takes the place of ss. 240, 241 of the Act of 1875, but has been extended to cover not only the person who had advanced the money for the execution of works but a person who has himself expended money for this purpose.

(*m*) Land Charges Act, 1925, s. 15 (1) ; 15 Halsbury's Statutes 538, and P.H.A., 1936, s. 329 ; 29 Halsbury's Statutes 530. See also title LOCAL LAND CHARGES.

(*n*) Housing Act, 1936, s. 21 (1) (c) ; 29 Halsbury's Statutes 582.

(*o*) *Supra*, and see s. 290 (6) ; 29 Halsbury's Statutes 510—518.

(*p*) P.H.A., 1936, s. 25 ; 29 Halsbury's Statutes 345, replacing P.I.L.A., 1875, s. 26 ; 18 Halsbury's Statutes 637.

(*q*) *Ibid.*, s. 39, combining and replacing P.H.A., 1875, ss. 23, 41, and P.H.A., 1907, s. 54 ; 18 Halsbury's Statutes 635, 642, 924.

(*r*) *Ibid.*, s. 40, replacing P.H.A., 1907, ss. 36, 37, and P.H.A., 1925, s. 42 ; 18 Halsbury's Statutes 924, 1138.

(*s*) *Ibid.*, ss. 43, 44, 45, 46, 47, combining and replacing P.H.A., 1875, ss. 35, 36, 38 ; P.H.A., 1890, s. 22 ; and P.H.A., 1907, s. 39 ; 18 Halsbury's Statutes 640 *et seq.*, 883, 925.

(*t*) *Ibid.*, s. 50, replacing P.H.A., 1875, s. 47 (3) ; 18 Halsbury's Statutes 646.

(*u*) *Ibid.*, s. 56, replacing P.H.A., 1907, s. 25, and P.H.A., 1925, s. 20 ; 18 Halsbury's Statutes 920, 1121.

(*a*) *Ibid.*, s. 58, representing a combination of ss. 75—78, Towns Improvement Clauses Act, 1847 ; 18 Halsbury's Statutes 554, 556, and of common local Act provisions.

(*b*) *Ibid.*, s. 59, representing a combination of P.H.A., 1890, s. 36 ; 18 Halsbury's Statutes 888, and local Act provisions.

(*c*) *Ibid.*, s. 60, reproducing provisions from certain local Acts.

or altering work not in conformity with bye-laws (*d*) ; (*xii.*) removing noxious matter (*e*) ; (*xiii.*) cleansing of filthy and verminous premises (*f*) ; (*xiv.*) sanitary conveniences accessible to streets (*g*) ; (*xv.*) abating or preventing recurrence of a statutory nuisance (*h*) ; (*xvi.*) provision of sufficient water supply to an occupied house (*i*) ; (*xvii.*) repair and cleansing of culverts (*k*) ; and (*xviii.*) works carried out by agreement on behalf of owners and occupiers (*l*). [988]

Recovery of Expenses under the Housing Act, 1936.—A local authority incurring expenses in the repair of insanitary houses or in doing other works under the Act in default of the owner, has powers of recovery of such expenses and of making charging orders very similar to those provided by the P.H.A., 1936 (*m*).

The chief differences are in relation to charging orders. Charging orders under the Housing Act are to be deposited with the clerk of the peace of the county, and this does not apply to charging orders under the P.H.A., 1936. Moreover, a charge under the Housing Act has no priority over (*a*) tithe commutation rent charge (*n*) ; and (*b*) until extinguished, quit rents and other charges having their origin in tenure ; and (*c*) any charge on the premises created or arising under any provision in any local Act authorising a charge for recovery of expenses incurred by a local authority ; and (*d*) any charge created under any Act authorising advances of public money.

Where more charges than one are charged they shall as between themselves take order according to their respective dates (*o*). [989]

London.—The Acts which apply in relation to this title in the provinces do not apply to London, and there is no private improvement rate in the administrative County of London. For provisions as to the improvement of streets, etc., see title LONDON ROADS AND TRAFFIC. [990]

(*d*) P.H.A., 1936, s. 65 (3), reproducing second part of P.H.A., 1875, s. 158 ; 13 Halsbury's Statutes 690.

(*e*) *Ibid.*, s. 79, reproducing P.H.A., 1875, s. 49 ; 13 Halsbury's Statutes 646, except with regard to manure.

(*f*) *Ibid.*, s. 88, replacing P.H.A., 1875, s. 46, and P.H.A., 1925, s. 46 ; 13 Halsbury's Statutes 645, 1185.

(*g*) *Ibid.*, s. 88, replacing P.H.A., 1890, s. 20 (2), (3), (4), and P.H.A., 1907, s. 49 ; 13 Halsbury's Statutes 832, 927.

(*h*) *Ibid.*, s. 96, replacing P.H.A., 1875, s. 104 ; 13 Halsbury's Statutes 666.

(*i*) *Ibid.*, s. 188, replacing P.H.A., 1875, s. 62 ; 13 Halsbury's Statutes 651, part of P.H. (Water) Act, 1878, ss. 3, 5 ; 20 Halsbury's Statutes 241, 244.

(*k*) *Ibid.*, s. 264, replacing P.H.A., 1925, s. 53 ; 13 Halsbury's Statutes 1138.

(*l*) *Ibid.*, s. 275, replacing P.H.A., 1925, s. 39 (5) ; 13 Halsbury's Statutes 1132.

(*m*) See Housing Act, 1936, ss. 10, 20, 21 ; 20 Halsbury's Statutes 573, 581, 582 ; and see title CHARGING ORDERS (HOUSING).

(*n*) Not presumably over a "redemption annuity" charged by virtue of the Tithe Act, 1936.

(*o*) Housing Act, 1936, s. 21 ; 20 Halsbury's Statutes 582.

PRIVATE STREETS

	PAGE		PAGE
INTRODUCTORY	382	THE PRIVATE STREET WORKS ACT,	
PRELIMINARY DEFINITIONS	383	1892	398
Private Street	—	Application and Construction	398
"Owner"	—	Procedure under the Act	398
(i.) Lessees	—	Provisional Apportionment, etc.	399
(ii.) Agents	—	Exempted Premises	401
(iii.) Trustees, Mortgagors, etc.	385	(i.) Churches and Chapels	401
Premises "fronting, adjoining or abutting" upon a street	385	(ii.) Premises <i>extra commercium</i>	401
THE PUBLIC HEALTH ACTS CODE		(iii.) Crown Property	401
Application of the Code	386	(iv.) Conservators of the River Thames and Port of London	
Scope of P.H.A., 1875, sect. 150	386	Authority	401
Part of a Street	386	(v.) Railway and Canal Com- panies	401
Works Required by a Local Authority	387	Approval of Provisional Appor- tionment, etc.	402
Paving	387	Publication of the Provisional Apportionment, etc.	402
Levelling	388	Deposit of Plans, etc.	402
Lighting	388	Objections to Provisional Ap- portionments, etc.	403
Repeated Requirements in the same Street	388	Grounds of Objection	403
Preliminary Procedure	389	Hearing and Determination of the Objections	405
Plans, Specifications, etc.	389	Execution of the Works	406
Notice to Pave	389	Final Apportionment	406
Form of Notice	389	Recovery of Expenses	407
Time for Execution of Works	390	(i.) Summary Proceedings	407
Service of Notice	390	(ii.) By Action	407
Premises Exempted from the Code	391	(iii.) By Enforcement of the Charge	408
Churches, etc.	391	(iv.) Private Improvement Expenses	409
Premises <i>extra commercium</i>	391	(v.) By Instalments	409
Crown Property	392	Contribution by Local Authority	409
Execution of the Works	392	Appeal to the Minister of Health	409
Apportionment of Expenses	393	FINANCIAL PROVISIONS	409
Recovery of Expenses	394	Accounts of a Local Authority	409
(i.) Summary Proceedings	395	Expenses of Private Street Works	409
(ii.) County Court Proceed- ings	395	Borrowing Powers	410
(iii.) Recovery as Private Im- provement Expenses	395	TOWNS IMPROVEMENT CLAUSES ACT, 1847, sect. 53	410
(iv.) Payment by Instalments	396	LONDON	410
(v.) Statutory Charge	396		
Contribution by Local Authority	397		
Appeal to the Minister of Health	397		
Borrowing by the Local Authority	397		

See also titles :

LONDON ROADS AND TRAFFIC;
PRIVATE IMPROVEMENT EXPENSES;
REPAIR OF ROADS;

ROAD MAKING AND IMPROVEMENT;
ROADS CLASSIFICATION.

INTRODUCTORY

Outside London, the law relating to private streets is, in the main, comprised in two statutory codes which are distinct and mutually exclusive, and which empower local authorities to execute street works

in private streets at the expense of the owners of the properties abutting on such streets.

The two codes are (i.) the P.H.As. code contained in the P.H.A., 1875, sects. 150—152 (*a*), as amended by the P.H.A. Amendment Act, 1890, sect. 11 (2) (*b*), and supplemented by sect. 81 of the P.H.A., 1925 (*c*), and also, in areas in which Part III. of the P.H.A. Amendment Act, 1890, has been adopted, by sect. 41 of that Act (*d*) ; and (ii.) the Private Street Works Act, 1892 (*e*). Either of the codes may be supplemented by sect. 19 of the P.H.A. Amendment Act, 1907 (*f*), and by sect. 85 of the P.H.A., 1925 (*g*), in areas in which those sections are in force (*h*).

Side by side with either of the codes, sect. 53 of the Towns Improvement Clauses Act, 1847 (*i*), may be in force in any urban area by virtue of some local improvement Act, and a brief reference to this section will, therefore, be made towards the end of this title (*k*).

Provisions relating to the adoption and taking over of private streets, whether in the two codes (*l*) or in the P.H.A. Amendment Act, 1907, sect. 19, will be dealt with in the title REPAIR OF ROADS.
[991]

PRELIMINARY DEFINITIONS

Private Street.—The subject-matter of both the codes is the private street, and in each code this is defined in similar terms (*m*) to be a street as defined by the P.H.A. not being a highway repairable by the inhabitants at large.

"Street" is defined in sect. 4 of the P.H.A., 1875 (*n*), as including "any highway . . . and any public bridge (not being a county bridge), and any road lane footway square court alley or passage whether a thoroughfare or not." In *Robinson v. Barton-Eccles Local Board* (*o*) it was laid down that the object of the clause was not to prevent the word receiving its ordinary, popular and natural sense whenever that would be properly applicable; but to enable the word as used in the Act, when there was nothing in the context or subject-matter to the contrary, to be applied to some things to which it would not ordinarily be applicable (*p*). At first there were several conflicting decisions as to whether in the two codes the word is to be understood in its ordinary, popular and natural sense, or whether it bears the extended

(*a*) 13 Halsbury's Statutes 686, 687.

(*b*) *Ibid.*, 827.

(*c*) *Ibid.*, 1152.

(*d*) *Ibid.*, 840; as to mode of adoption, see title ADOPTIVE ACTS.

(*e*) 9 Halsbury's Statutes 193—206.

(*f*) 13 Halsbury's Statutes 917.

(*g*) *Ibid.*, 1130.

(*h*) See title ADOPTIVE ACTS.

(*i*) 13 Halsbury's Statutes 547.

(*k*) See *post*, p. 410.

(*l*) P.H.A., 1875, s. 152; P.H.A. Amendment Act, 1890, s. 41, and P.H.A., 1925, ss. 82; 13 Halsbury's Statutes 687, 840, 1153; Private Street Works Act, 1892, ss. 19, 20; 9 Halsbury's Statutes 203.

(*m*) P.H.A., 1875, s. 150; 13 Halsbury's Statutes 686; " . . . any street . . . (not being a highway repairable by the inhabitants at large)"; Private Street Works Act, 1892, s. 5; 9 Halsbury's Statutes 195; "street" means (unless the context otherwise requires) a street as defined by the P.H.As. and not being a highway repairable by the inhabitants at large."

(*n*) 13 Halsbury's Statutes 625.

(*o*) (1883), 8 App. Cas. 798; 26 Digest 260, 86.

(*p*) *Ibid.*, per Lord SELBORNE, L.C., at p. 801.

meaning assigned to it in the definition (*q*) ; but in *Jowett v. Idle Local Board* (*r*) it was held that in sect. 150 of the Act of 1875, the term "street" was used in the extended sense assigned to it in *ibid.*, sect. 4, and this decision has since been so frequently followed (*s*) that the point may now be regarded as settled.

In its extended sense the term "street" may be applied to places which are in all respects private and over which the public have no right (*t*) ; to a cul-de-sac (*u*) ; to a private passage giving access to the rear of a row of houses (*u*) ; and to a country path (*a*).

The second characteristic of a private street is that it must not be a highway repairable by the inhabitants at large. On the question what is a highway repairable by the inhabitants at large, see title ROADS CLASSIFICATION. [992]

"Owner."—“Owner” is defined in the P.H.A., 1875 (*b*) (which definition is incorporated by reference in the Private Street Works Act, 1892 (*c*)), as the person for the time being receiving the rack-rent of the lands or premises in connection with which the word is used, whether on his own account or as agent or trustee for any other person, or who would so receive the same if such lands or premises were let at a rack-rent (*d*). Where the occupier of any premises is also the beneficial owner, or the direct tenant at a rack-rent of such owner, there can be no difficulty in determining who is the “owner” within the definition.

Frequently, however, the relationships existing between the persons interested in the property render the question of determining the “ownership” more complicated. It may be found that there are several persons, or groups of persons, any of whom may be regarded as “owner” within the meaning of the definition (*e*). [993]

(*q*) *Maude v. Baildon Local Board* (1883), 10 Q. B. D. 394 ; 26 Digest 263, 93 (*held*), that whether or not a road was a “street” was a question of fact for the justices, and that they were not bound to find as a matter of fact that it was a street by the terms of the definition in s. 4) ; *Portsmouth Corpn. v. Smith* (1883), 13 Q. B. D. 184, C. A. ; 26 Digest 274, 125 (*held*), that the extended definition must be applied. This was a case under the Towns Improvement Clauses Act, 1847, in which the definition of “street” (s. 3 ; 13 Halsbury’s Statutes 552) is similar to, but not identical with, the definition in the P.H.A., 1875) ; *R. v. Burnup* (1886), 50 J. P. 593 ; 26 Digest 270, 94 (*held*), that in s. 150 “street” was used in its ordinary and popular sense.

(*r*) (1888), 36 W. R. 530, C. A. ; 26 Digest 270, 101.

(*s*) *Fenwick v. Croydon Rural Sanitary Authority*, [1891] 2 Q. B. 216 ; 26 Digest 271, 103 ; *Walthamstow U.D.C. v. Sandell* (1904), 63 J. P. 509 ; 26 Digest 271, 105.

(*t*) *Taylor v. Oldham Corpn.* (1876), 4 Ch. D. 394 ; 26 Digest 270, 96 ; *Midland Rail. Co. v. Watton* (1886), 17 Q. B. D. 80, C. A. ; 26 Digest 267, 72 (roads from which the public were excluded except on payment of toll held to be “streets” within the meaning of s. 4).

(*u*) *Walthamstow U.D.C. v. Sandell*, *supra* ; *R. v. Goole Local Board*, [1891] 2 Q. B. 212 ; 26 Digest 270, 95.

(*a*) *Woodford U.D.C. v. Henwood* (1890), 64 J. P. 148 ; 26 Digest 543, 2418.

(*b*) S. 4 ; 13 Halsbury’s Statutes 625.

(*c*) S. 5 ; 9 Halsbury’s Statutes 105.

(*d*) “Rack-rent” is defined as rent which is not less than two-thirds of the full annual value (determined in accordance with the provisions of the Act) of the property out of which the rent arises (P.H.A., 1875, s. 4 ; 13 Halsbury’s Statutes 625).

(*e*) E.g. A., the freeholder, lets Blackacre to B. at a rent less than the rack-rent of the premises, B. sub-lets the whole of the premises to C. at a rack-rent, D. acting as B.’s agent for the collection of the rent. In this case, whilst A. is not the owner of Blackacre within the definition, both B. and D. are “owners,” and C. will also become a third “owner” if he further sub-lets the whole of the premises at a rack-rent in excess of the rent he pays to B. (*Walford v. Hackney Board of Works* (1894), 43 W. R. 110 ; 26 Digest 492, 2020).

(i.) *Lessees*.—Where there is a letting with or without a series of sub-lettings of the whole (*f*) of the premises under consideration in any case, then the person or persons who are in receipt of a rent in excess of two-thirds of the full annual value of the premises are each of them the "owner" of the premises (*g*). If, on the other hand, no person concerned in such a series of lettings is in receipt of a rack-rent, the ultimate lessee is the "owner," as he alone is in a position to let the property at a rack-rent (*h*).

Where there is a lease, or an agreement for a lease, of premises for a long term of years under which the lessee is in occupation, the fact that the freeholder is in receipt of a substantial ground rent is not of itself sufficient to make him the "owner" (*i*). If, however, the interest of the lessee in the premises is deferred until the fulfilment of some condition or the happening of an event, the freeholder is in the meantime the "owner" (*k*). [994]

(ii.) *Agents*.—Agents in receipt of the rack-rent of premises are expressly included in the definition of "owner," and an agent of this class may be called upon to pay apportioned charges notwithstanding that he has no money in hand on behalf of his principal (*l*). A person to whom rents are paid by the actual collector to be held on behalf of the lessor is an agent liable to be charged as "owner" (*m*).

[995]

(iii.) *Trustees, Mortgagors, etc.*.—Trustees in receipt of, or entitled to receive, the rack-rent of premises are liable as "owners" although not beneficially interested in the property (*n*). A mortgagee in possession is an owner (*o*), but a receiver appointed by the Court is not (*p*). [996]

Premises "fronting, adjoining or abutting" upon a street.—This expression appears to require some degree of contiguity, though not necessarily on the same horizontal plane. For premises to come within the meaning of the expression it is not necessary for them to have any access from the street upon which they are said to front, adjoin or abut (*q*). Where premises are actually contiguous with the street, it is immaterial that they are at a different level from that of the

(*f*) Where a tenant sub-lets a part of the premises at a rent in excess of the rack-rent, he does not thereby constitute himself an owner within the meaning of the Act, for the rent which he receives is not rent of the premises regarded as a whole, but a subsidiary rent of a part of the premises (*Kensington Borough Council v. Allen*, [1926] 1 K. B. 576; 36 Digest 230, 708).

(*g*) *Kensington Borough Council v. Allen, supra*.

(*h*) *Truman, Hanbury, Buxton & Co., Ltd. v. Kerslake*, [1894] 2 Q. B. 774; 36 Digest 234, 732.

(*i*) *Poplar Board of Works v. Love* (1874), 29 L. T. 915; 26 Digest 491, 2013.

(*k*) *Holland (Lady) v. Kensington Vestry* (1867), L. R. 2 C. P. 565; 26 Digest 490, 2011; *Driscoll v. Battersea Borough Council*, [1903] 1 K. B. 881; 26 Digest 490, 2012.

(*l*) *St. Helen's Corp. v. Kirkham* (1885), 16 Q. B. D. 403; 26 Digest 551, 2468.

(*m*) *Watts v. Battersea Corp.*, [1929] 2 K. B. 63, C. A.; Digest (Supp.).

(*n*) *In Re Barney, Harrison v. Barney*, [1894] 3 Ch. 562; 38 Digest 178, 199.

(*o*) *Maguire v. Leigh-on-Sea U.D.C.* (1906), 70 J. P. 479; 26 Digest 545, 2435; *Tottenham Local Board v. Williamson* (1893), 62 L. J. (Q. B.) 322; 26 Digest 551, 2470.

(*p*) *Bacup Corp. v. Smith* (1890), 44 Ch. D. 305; 26 Digest 524, 2248; *Hackett v. Smith*, [1917] 2 I. R. 508.

(*g*) *R. v. Newport Local Board of Health* (1868), 3 B. & S. 341; 26 Digest 530, 2281; *Manchester Corp. v. Chapman* (1868), 37 L. J. (M. C.) 173; 26 Digest 550, 2465; *Paddington Vestry v. Bramwell* (1880), 44 J. P. 815; 26 Digest 495, 2037; *Walthamstow U.D.C. v. Sandell* (1904), 68 J. P. 509; 26 Digest 522, 2225.

street (*r*). There must, however, be contiguity, mere proximity being insufficient (*s*). Where premises are separated from a street by a narrow strip of land the owner of that strip will usually be liable for private street works expenses as being the owner of premises fronting, adjoining or abutting upon the street (*t*) ; but the court may find as a matter of fact that the strip has become part of the street (*u*). [997]

THE PUBLIC HEALTH ACTS CODE

Application of the Code.—The powers contained in sect. 150 of the P.H.A., 1875 (*x*), may be exercised by the councils of all boroughs and urban districts in which the Private Street Works Act, 1892, has not been adopted (*a*). They can no longer be put into operation in rural districts to which the Private Street Works Act, 1892, has now been applied by the L.G.A., 1929 (*b*). [998]

Scope of P.H.A., 1875, sect. 150.—The powers conferred by sect. 150 of the P.H.A., 1875 (*x*), enable an urban authority, as respects any private street (*c*) or any part of such street within their area which is not sewer'd levelled paved metalled flagged channelled and made good or is not lighted to their satisfaction, by notice to the owners or occupiers of the premises fronting, adjoining or abutting on such street or part thereof, to require such owners to carry out the necessary works within a time specified in the notice. Upon the failure of the owners to execute the works the authority are empowered themselves to execute the work and to recover the expenses incurred in so doing from the owners in default. [999]

Part of a Street.—A local authority may deal not only with the whole of a private street (the meaning of which term has already been discussed (*c*)), but also with a part of such a street. That is to say, they can deal with carriageway and footway separately, or they can divide up the street, at their discretion, either longitudinally (*d*), or transversely (*e*).

(*r*) *Newport Urban Sanitary Authority v. Graham* (1882), 9 Q. B. D. 183 ; 26 Digest 522, 2224 (owner of premises separated by wall from and five feet higher than the level of the street held to be liable for private street works expenses) ; *Higgins v. Harding* (1872), L. R. 8 Q. B. 7 ; 26 Digest 404, 2933 (railway embankment and buttress held to abut on street) ; *London and North Western Rail. Co. v. St. Pancras Vestry* (1868), 17 L. T. 654 ; 26 Digest 493, 2030 (railway in cutting held to adjoin street).

(*s*) *Leith Magistrates and Town Council v. Gibbs* (1882), 9 R. (Ct. of Sess.) 627 ; 26 Digest 522, 2227*i* ; *Lighthound v. Higher Bebington Local Board* (1885), 16 Q. B. D. 577, C. A. ; 26 Digest 522, 2227 (premises separated from street by wall owned by third party). Cf. *Wakefield Local Board v. Lee* (1876), 1 Ex. D. 386 ; 26 Digest 522, 2226 (premises separated from street by narrow bollard held to adjoin it).

(*t*) *Williams v. Wandsworth District Board of Works* (1884), 13 Q. B. D. 211 ; 26 Digest 495, 2036 ; *Ayer v. Hammersmith, Vestry*, [1897] 1 Q. B. 644 ; 26 Digest 495, 2039 ; *Hall v. Balsorox U.D.C.* (1909), 100 L. T. 372 ; 26 Digest 545, 2429.

(*u*) *Hampstead Borough Council v. Western* (1907), 71 J. P. 565 ; 26 Digest 496, 2043.

(*v*) 18 Halsbury's Statutes 680.

(*w*) P.H.A., 1875, ss. 2, 180 ; 13 Halsbury's Statutes 624, 686 ; Private Street Works Act, 1892, s. 25 : 9 Halsbury's Statutes 205.

(*x*) S. 90 (2), (3), and Sched. I. Part I. ; 10 Halsbury's Statutes 904, 975. See post, p. 400.

(*y*) See ante, p. 383.

(*z*) *Wakefield Urban Sanitary Authority v. Mander* (1880), 5 C. P. D. 248 ; 26 Digest 530, 2222 (*held*, that an authority could deal with footpath separately from rest of street, the cost being borne by the owners of the premises abutting on the part made up).

(*aa*) *Wandsworth Local Board v. Taylor* (1898), [1897] 2 Ch. 442, n. ; 41 Digest 5, 22.

Although by the terms of sect. 150 the powers contained therein cannot be exercised by a local authority as respects a street which is, as to the whole thereof, a highway repairable by the inhabitants at large, even where there is in existence an agreement whereby the frontagers purport to confer such powers on the authority (*f*), yet the last paragraph of the section permits the powers thereunder to be exercised in respect of any street or road of which part is or may be a public footway or repairable by the inhabitants at large as fully as if the whole of such street or road was a highway not repairable by the inhabitants at large. This power is, however, exercisable only where the existing public footpath or old highway is merged and loses its identity in the new street (*g*), and not where the added portion is distinct from the existing highway so as reasonably to be regarded as constituting in itself a new "street" which can be made up under the section (*h*).

Where land purchased by, or dedicated under an agreement with, a local authority is thrown into a street which is a highway repairable by the inhabitants at large, the added strip will be regarded as partaking of the nature of the highway to which it is added, and consequently the cost of paving such strip will not be chargeable against the adjoining owners (*i*). [1000]

Works Requirable by a Local Authority.—A local authority may by the terms of sect. 150 require a private street to be sewer'd levelled paved metalled flagged channelled and made good, and provided with proper means of lighting. Subject to the limitations indicated in the following observations on particular items among this list of works which an authority may require and also to appeal in any case to the Minister of Health under sect. 268 of the P.H.A., 1875 (*k*), it is for the authority alone to determine what is required in any street, and they will not be prevented by any previous arrangement independent of proceedings under the section from exercising their statutory discretion (*l*). [1001]

Paving.—It is provided by the P.H.A. Amendment Act, 1890 (*m*), that, whilst a street or part of a street which has been asphalted or paved with wood, tar paving or artificial stone or other improved paving of any kind is to be deemed to have been paved within the meaning of any provision in the P.H.A., a street shall not be deemed to be paved to the satisfaction of an urban authority unless it is paved with such kind as well as with such quality of paving as the authority consider suitable for the street. In 1924 the technical advisers of the M. of H. consulted with the Institution of Municipal and County Engineers with a view to framing, for the guidance of local authorities, a standard

(*f*) *Folkestone Corp. v. Marsh* (1905), 94 L. T. 511; 26 Digest 544, 2420.

(*g*) *Evans v. Newport Urban Sanitary Authority* (1889), 24 Q. B. D. 264; 26 Digest 520, 2216.

(*h*) *Richards v. Kessick* (1888), 57 L. J. (M. C.) 48; 26 Digest 520, 2214; *White v. Fulham Parish Vestry* (1896), 74 L. T. 425; 26 Digest 497, 2057; *West Hartlepool Corp. v. Robinson* (1897), 77 L. T. 387, C. A.; 26 Digest 547, 2448; *Property Exchange, Ltd. v. Wandsworth Board of Works*, [1902] 2 K. B. 61, C. A.; 26 Digest 498, 2058.

(*i*) *Portsmouth Corp. v. Hall* (1907), 98 L. T. 513, C. A.; 26 Digest 521, 2279. Quare, how far this principle is applicable to land added to a highway under an order made by virtue of P.H.A., 1925, s. 30; 18 Halsbury's Statutes 1126.

(*k*) 18 Halsbury's Statutes 736.

(*l*) *Sunderland Corp. v. Priestman*, [1927] 2 Ch. 107; Digest (Supp.).

(*m*) S. II (2); 18 Halsbury's Statutes 827.

specification of private street works which would not be too burdensome to the frontagers on the one hand, and would be fair on the other hand to the ratepayers who have to pay for the upkeep once the street is taken over. A standard specification of reasonable requirements in normal circumstances and under urban conditions was agreed with the institution and was published in their journal on June 17, 1924.

Unless sect. 85 of the P.H.A., 1925 (*n*), has been adopted (*o*) in any area the urban authority cannot require the frontagers to vary the respective widths of the carriageway and footways, but have to deal with the street as they find it (*p*), if the relative proportions have been intentionally determined by the owner of the soil (*q*).

The adoptive section referred to, however, empowers local authorities, when they proceed with the paving and making up of a private street, whether under sect. 150 or under the Private Street Works Act, 1892, to require a variation of the relative widths of the carriageway and the footway or footways of the street, provided that if the resultant charge is greater than that which could have been imposed in respect of a carriageway or footway of the width prescribed by any bye-law or enactment which applied to the street when it was laid out, the authority and not the owners are to bear the excess. [1002]

Levelling.—An authority proceeding under the Public Health Acts Code can call upon the frontagers to carry out only such works of levelling as are required in the street itself and not further works of levelling to bring the street into conformity with other streets (*r*). [1003]

Lighting.—It is generally accepted that an authority can require the frontagers to provide means of lighting only in the narrower sense of the term, *i.e.* lamp standards and fittings and electricity or gas mains. The current or gas actually used must be provided by the authority themselves. [1004]

Repeated Requirements in the same Street.—So long as a private street remains a highway not repairable by the inhabitants at large the local authority may require the frontagers to carry out any of the works mentioned in the section (other than sewerage) notwithstanding that similar works have already been carried out to their satisfaction (*s*).

With regard to sewerage the position is different. Prior to October 1, 1937, a sewer upon completion became vested in the local authority and the responsibility of seeing that such sewer remains adequate to the purposes for which it is required thenceforth rests upon them. The authority are allowed a reasonable time within which to indicate that the sewer is inadequate *ab initio* to serve the needs of the street, and to call upon the adjoining owners to carry out the necessary works of sewerage; but if the authority fail to take these steps their silence must be

(*n*) 18 Halsbury's Statutes 1130.

(*o*) For the procedure on the adoption of this section, see title ADOPTIVE ACTS.

(*p*) *Robertson v. Bristol Corp.*, [1900] 2 Q. B. 198, C. A.; 26 Digest 527, 2259.

(*q*) *Stretford U.D.C. v. Manchester South Junction and Altringham Rail. Co.* (1903), 68 J. P. 59, C. A.; 26 Digest 523, 2237.

(*r*) *Cory v. Kingston-upon-Hull Local Board of Health* (1864), 34 L. J. (M. C.) 7; 26 Digest 527, 2261. If in altering the level of the street they interfere with the access to any premises they will be liable to compensate the owner therefor (*R. v. Wallasey Local Board of Health* (1869), L. R. 4 Q. B. 351; 26 Digest 385, 659).

(*s*) *Barry and Cadwston Local Board v. Parry*, [1895] 2 Q. B. 110; 26 Digest 529, 2274.

taken as an indication that they are satisfied with the sewer, and they cannot thereafter require the adjoining owners to undertake fresh works of sewering (t). A distinction must, however, be drawn between the sewerage of individual houses or groups of houses and the sewerage of a street as such. Thus, in *Handsworth U.D.C. v. Derrington* (u), it was held that, where certain houses in a private street were connected with the sewers in other streets, and, subsequently, after the erection of further houses in the private street, the authority called upon the owners of all the premises to sewer the street, the expenses incurred by the authority in executing the works on the default of the owners were recoverable. Whether in any case a street has been seweraged to the satisfaction of the local authority is a question of fact (a). [1005]

Preliminary Procedure. *Plans, Specifications, etc.*—It is provided by sect. 150 that, as a first step in the procedure thereunder, the urban authority shall cause to be made under the direction of their surveyor: (i.) plans and sections of the intended works on a scale of not less than one inch for eighty-eight feet for a horizontal plan, and not less than one inch for ten feet in a vertical section, and in the case of a sewer shewing the depth of such sewer below the surface of the ground; and (ii.) an estimate of the probable cost of the works.

The plans, sections and estimate so prepared must be deposited at the office of the authority and be open to inspection by any person interested therein during the period specified in the notice hereafter referred to. It has, however, been held that this requirement is directory only and is not a condition precedent to the recovery of expenses incurred by an authority in the execution of works under the section (b). [1006]

Notice to Pave. *Form of Notice.*—Whilst no special form of notice is referred to in sect. 150, the Fourth Schedule to the P.H.A., 1875 (e), includes a form which, by virtue of sect. 817 of the Act may be used and shall be sufficient for all purposes. The notice must either give details of the works required and state that the plans and sections are deposited for inspection (d), or alternatively, require in general terms the owners to execute specified street works referring them for particulars of the works required either to the authority's surveyor or to some deposited specification (e).

A minor mistake, such as would not mislead a reasonable person reading it (e.g. the misdescription of a road), will not invalidate the notice (f), and where a notice is *ultra vires* as to part of the works required, but valid as to the remainder, it will be enforceable as to the part which is valid (g).

(t) *Bonello v. Twickenham Local Board of Health, Holmes v. Twickenham Local Board of Health* (1887), 20 Q. B. D. 68, C. A.; 26 Digest 527, 2263; *Hornsey Local Board v. Davis*, [1893] 1 Q. B. 750, C. A.; 26 Digest 528, 2264; *Wilmslow U.D.C. v. Sidebottom* (1906), 70 J. P. 537; 26 Digest 528, 2265.

(u) [1897] 2 Ch. 438; 26 Digest 528, 2268.

(a) *Bloor v. Beckenham U.D.C.*, [1908] 2 K. B. 671; 26 Digest 529, 2269.

(b) *Cook v. Ipswich Local Board* (1871), L. R. 6 Q. B. 451; 26 Digest 521, 2220; *Shanklin Local Board v. Millar* (1880), 5 C. P. D. 272; 26 Digest 530, 2236.

(c) 13 Halsbury's Statutes 776. See 12 Ency. Forms 556.

(d) *Stourbridge U.D.C. v. Butler and Grove*, [1906] 1 Ch. 87; 26 Digest 525, 2252.

(e) *Bayley v. Wilkinson* (1864), 16 C. B. (N. S.) 161; 26 Digest 525, 2251.

(f) *Blackburn Corp. v. Sanderson*, [1902] 1 K. B. 794, C. A.; 26 Digest 548, 2452.

(g) *Hall v. Potter* (1860), 39 L. J. (M. C.) 1; 26 Digest 526, 2255; *Manchester Corp. v. Hampson* (1886), 35 W. R. 334; (1887), 35 W. R. 501, C. A.; 26 Digest 526, 2256.

The notice, which may be in writing, or in print, or partly in writing and partly in print, is sufficiently authenticated if it is signed by the clerk, etc., to the local authority (*b*), and where the name of the clerk is printed in the appropriate place on the notice, this will be deemed to be a good signature (*i*). [1007]

Time for Execution of Works.—The notice must specify a time within which the owner is required to execute the street works, and such time must be reasonable having regard to all the circumstances of the particular matter in hand. It must at least be a sufficient time for the completion of the works required in the section of the street upon which any individual owner's premises abut (*b*). The question of what is the proper time to allow for the execution of the works is a matter entirely for the local authority who may delegate it to some competent person (*t*). Once they have *bona fide* exercised their discretion, however, nothing further is required although some persons might differ as to the quantum to be allowed (*a*). [1008]

Service of Notice.—The notice to execute street works may be served either on the owner or on the occupier of premises fronting, adjoining or abutting on the street in any of the modes prescribed by sect. 267 of the P.H.A., 1875 (*b*), that is to say : (i.) by delivering it to or at the residence of the person to whom it is addressed (*c*) ; (ii.) where the notice is addressed to the owner or occupier of premises, by delivering the same or a true copy thereof to some person on the premises, or, if there is no person on the premises who can be served, by fixing the same on some conspicuous part of the premises (*d*) ; (iii.) by posting the notice in a prepaid letter addressed to the owner. If this last mode is adopted the notice is to be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of post, and in proving such service it is sufficient to prove that the notice was properly addressed and put into the post (*e*).

Many local authorities, even where they are aware of the name and residence of the owner, prefer to serve their notices according to the second mode, at the same time taking advantage of the provision

(*b*) P.H.A., 1875, s. 266 ; 18 Halsbury's Statutes 735.

(*i*) *Brydges v. Diaz* (1891), 7 T. L. R. 215 ; 38 Digest 177, 190.

(*b*) *Macclesfield Corpn. v. Macclesfield Grammar School*, [1921] 2 Ch. 189 ; 26 Digest 526, 2354 ; *Sunderland Corpn. v. Gray*, [1928] Ch. 756 ; Digest (Supp.) ; *Cardiff Corpn. v. Cardiff Pure Ice and Cold Storage Co., Ltd.* (1930), 95 J. P. 11, C. A. ; Digest (Supp.). See also *Bristol Corpn. v. Simmott*, [1918] 1 Ch. 62, C. A. ; 26 Digest 525, 2253.

(*i*) *Macclesfield Corpn. v. Macclesfield Grammar School*, *ubi supra*.

(*a*) *Cardiff Corpn. v. Cardiff Pure Ice and Cold Storage Co., Ltd.*, *ubi supra*.

(*b*) 18 Halsbury's Statutes 735.

(*c*) "Residence" for the purposes of this provision includes a person's place of business (*Mason v. Bibby* (1864), 2 H. & C. 581 ; 38 Digest 176, 182 ; *Newport Corpn. v. Long* (1892), 57 J. P. 199 ; 38 Digest 176, 183 ; *R. v. Braithwaite*, [1918] 2 K. B. 310 ; 38 Digest 176, 180).

(*d*) Notwithstanding that the authority are aware of the residence of an owner they may, if they so elect, adopt this mode of service rather than the first (*Woodford U.D.C. v. Hemwood* (1890), 64 J. P. 148 ; 26 Digest 548, 2418 ; *Sharpley v. Bear* (1903), 67 J. P. 442 ; 26 Digest 524, 2249). What is a "conspicuous part of the premises" is a question of fact which will not be reviewed on appeal (*West Ham Corpn. v. Thomas* (1908), 78 J. P. 65 ; 26 Digest 525, 2250).

(*e*) Under a similar provision contained in the Valuation (Metropolis) Act, 1869, it was held that upon proof that a notice had been duly posted, correctly addressed and prepaid, a presumption of law arose that the notice had been received notwithstanding that evidence was tendered to show that it was not in fact received (*R. v. Westminster Unions Assessment Committee, ex parte Woodward & Sons*, [1917] 1 K. B. 832 ; 38 Digest 698, 1556 ; *Woodford U.D.C. v. Hemwood*, *supra*).

enabling them to address the notices by the description of the "owner" or the "occupier" of the premises (naming them) in respect of which the notice is given, without further name or description (f). If the notice is served in this manner, service will be good even though a dispute subsequently arises regarding the ownership of the premises.

Whilst the service of the notice to pave either on the owner or on the occupier of the premises affected is a condition precedent to the recovery of expenses from the owner (g), failure to serve one or more owners does not prejudice the recovery of the appropriate proportion of expenses from the owners who are properly served (h). [1009]

Premises Exempted from the Code.—There are certain classes of premises which are beyond the scope of the code either by express provision (i) or at common law.

Churches, etc.—By sect. 151 of the P.H.A., 1875, the incumbent or minister of any church, chapel or place exclusively appropriated to public religious worship which is by law exempt from rates for the relief of the poor, is not to be liable to any expenses of street works as owner or occupier of such church, chapel or place, or of any churchyard or burial ground attached thereto. It is also provided that such expenses shall not be deemed to be a charge on the church, chapel, or place or on the churchyard or burial ground, or to subject the same to legal process (i). The primary exemption extends only to buildings (being within one of the classes mentioned above) (k) exclusively appropriated to public religious worship (l). Where such buildings are vested in trustees as distinguished from incumbents and ministers they are not exempted by the section (m).

As regards churchyards and burial grounds, the words "attached thereto" are to be taken as importing physical contiguity to the church to which they belong (n). [1010]

Premises extra commercium.—Having regard to the definition of "owner" contained in the P.H.A., 1875 (o), whereby "ownership" for the purposes of the Act is determined by reference to receipt of the rack-rent of the premises in respect of which the term is used, premises which are incapable of being let at a rack-rent must be regarded as ownerless and so, indirectly, exempt from the provisions contained in the code. The following premises have been held to come within this category : streets which have been dedicated to the use of the

(f) P.H.A., 1875, s. 267; 13 Halsbury's Statutes 735.

(g) *Farmworth Local Board v. Compton* (1886), 34 W. R. 334, C. A.; 26 Digest 524, 2243; *Wallsend Local Board v. Murphy* (1889), 61 L. T. 777; 26 Digest 524, 2247.

(h) *Sunderland Corp. v. Gray*, [1928] Ch. 756; Digest (Supp.); not following *Handsworth U.D.C. v. Derrington*, [1897] 2 Ch. 438; 26 Digest 528, 2268.

(i) P.H.A., 1875, s. 151; 13 Halsbury's Statutes 687.

(k) *Iford Corp. v. Mallinson* (1932), 96 J. P. 185; Digest (Supp.) (land adjoining chapel held not to be exempted by a similar provision in the Private Street Works Act, 1892).

(l) *Walton-le-Dale U.D.C. v. Greenwood* (1911), 105 L. T. 547; 26 Digest 542, 2405; *Hornsey Local Board v. Brewis* (1890), 60 L. J. (M. C.) 48; 26 Digest 522, 2233.

(m) *Hornsey Local Board v. Brewis, supra*. Cf. Private Street Works Act, 1892, s. 16, post.

(n) *Holy Law South Broughton Burial Board v. Falsworth U.D.C.*, [1928] 1 K. B. 231; Digest (Supp.) (burial ground situated at a distance from the synagogue in respect of which it was owned and maintained held not to be "attached thereto" for the purposes of this section).

(o) S. 4; 13 Halsbury's Statutes 625. See *ante*, p. 384.

public whether expressly or by implication (*p*) ; churches and chapels of the Church of England (*q*) ; commons and open spaces held under special Act of Parliament constituting them virtually trust properties held on behalf of the public (*r*), but not parks and pleasure grounds held under the P.H.A., as these can, subject to due compliance with certain statutory requirements, be alienated (*s*). A school is not exempted as being premises *extra commercium* so as to relieve the trustees or a local authority from payment of apportioned expenses (*t*). [1011]

Crown Property.—In accordance with the general principle of the common law, the Crown not being made subject to the code either by express words in the P.H.A. nor by implication, premises in the ownership of the Crown are exempt from the provisions of the code (*a*). [1012]

Execution of the Works.—Where the works are carried out by the owners they are required to be executed in accordance with the terms of the notice and to the satisfaction of the local authority. If the owners *bona fide* endeavour to carry out the works, commencing so to do before the authority put the work in hand, the authority must permit them to proceed notwithstanding that the period allowed by the notice to pave has expired (*b*).

Upon the default of the owners to carry out the works described in the notice the authority may themselves execute the works either by their own workmen or by an independent contractor (*c*). If certain owners comply with the notice, but others do not, the authority need not serve fresh notices on the latter before executing the outstanding works (*d*).

(*p*) *Plumstead Board of Works v. British Land Co.* (1875), L. R. 10 Q. B. 208, Ex. Ch.; 26 Digest 495, 2039; *Macey v. James* (1917), 86 L. J. (K. B.) 1257; 26 Digest 449, 1651; *Streetsford U.D.C. v. Manchester South Junction and Altringham Rail. Co.* (1903), 68 J. P. 59, C. A.; 26 Digest 523, 2237. But the owner of the soil of a road which has merely been laid out without being irrevocably dedicated to the use of the public is liable to the payment of road charges in respect of any frontage such road may have to a private street (*Pound v. Plumstead Board of Works, Northbrook (Lord) v. Plumstead Board of Works* (1871), L. R. 7 Q. B. 183; 26 Digest 494, 2035).

(*q*) *Angell v. Paddington Vestry* (1868), L. R. 3 Q. B. 714; 26 Digest 491, 2014; *Plumstead District Board of Works v. Ecclesiastical Commissioners for England*, [1891] 2 Q. B. 361; 26 Digest 491, 2015. A nonconformist place of worship is not exempt as being premises *extra commercium* inasmuch as it is incapable of being let at rack-rent only (if at all) by virtue of some trust deed which could, subject to compliance with proper formalities, be revoked (*Wright v. Ingle* (1885), 16 Q. B. D. 376, C. A.; 26 Digest 491, 2018; *Calger v. St. Mary, Islington, Vestry* (1881), 50 L. J. (M. C.) 50; 26 Digest 491, 2017; *Hornsey Local Board v. Brewis* (1890), 60 L. J. (M. C.) 48; 26 Digest 522, 2233).

(*r*) *L.C.C. v. Wandsworth Borough Council*, [1903] 1 K. B. 797; 26 Digest 492, 2024.

(*s*) *Herne Bay U.D.C. v. Payne and Wood*, [1907] 2 K. B. 130; 26 Digest 544, 2425.

(*t*) *Hornsey District Council v. Smith*, [1897] 1 Ch. 848, C. A.; 26 Digest 523, 2235; *Bowditch v. Wakefield Local Board* (1871), L. R. 6 Q. B. 567; 26 Digest 523, 2234; *London School Board v. St. Mary, Islington* (1875), 1 Q. B. D. 65; 26 Digest 493, 2029.

(*a*) *Hornsey U.D.C. v. Hennell*, [1902] 2 K. B. 73; 26 Digest 522, 2230.

(*b*) *Denman v. Finchley U.D.C.* (1912), 76 J. P. 405; 26 Digest 529, 2280.

(*c*) If a contractor be employed he is entitled to be paid for the works executed by him notwithstanding that by his contract payment is deferred until the expenses are collected from the owners, and no expenses are in fact received by the authority (*Worthington v. Ludlow* (1862), 2 B. & S. 508; 26 Digest 529, 2275).

(*d*) *Simcox v. Wandsworth Local Board* (1881), 8 Q. B. D. 39; 26 Digest 524, 2242.

In executing the works the urban authority may exercise their powers under the P.H.A., 1875, sect. 153 (e), with regard to alterations to water mains, gas pipes, etc., laid in the street, and may, without prejudicing their right to recover the expenses, deviate within reason from the plans, sections and specification (f). The deviation may include the execution of more extensive works than are necessary for the purposes of the street itself, provided that the owners are charged only that proportionate part of the cost which is attributable to the street in question (g). If the owners consider the deviation to be unreasonable they may appeal to the Minister of Health (h). [1018]

Apportionment of Expenses.—Upon the completion of the works the expenses incurred in their execution must be apportioned by the surveyor to the local authority strictly in accordance with the linear frontage of the premises fronting, adjoining or abutting on the street (i), whether or not such premises have access thereto (k). In making the apportionment the surveyor should include only such expenses as have actually been incurred in the execution of the works in the individual street or part of a street (l) in respect of which the notices to pave were served. It is doubtful whether any sum for supervision, office expenses, etc., can be included (m). Each property in the street must be the subject of a separate apportionment notwithstanding that several properties are in a common ownership (n).

Each of the owners in default must be served with a notice of the apportionment in so far as it affects his property (o), and the apportionment will be binding and conclusive upon each owner unless within three months from the date of such service he gives written notice disputing the amount settled by the surveyor to be due from him (p).

When a notice, which may be in general terms (q), has been given by an owner, the matter must be referred to arbitration under sects. 179–181 of the P.H.A., 1875 (r), and until the matter in dispute has been determined no proceedings can be instituted for the recovery of the

(e) 13 Halsbury's Statutes 688.

(f) *Acton Local Board v. Lewsey* (1886), 11 App. Cas. 93; 26 Digest 520, 2276 (omission of concrete foundations to footways found unnecessary during construction); *Kershaw v. Sheffield Corpns.* (1887), 51 J. P. 759; 26 Digest 520, 2277 (substitution of smaller sewer).

(g) *Acton U.D.C. v. Watts* (1903), 67 J. P. 400; 26 Digest 520, 2279.

(h) *Cook v. Ipswich Local Board* (1871), L. R. 6 Q. B. 451; 26 Digest 521, 2220.

(i) See *ante*, p. 385.

(k) *R. v. Newport Local Board of Health* (1863), 3 B. & S. 341; 26 Digest 530, 2281. For form of apportionment, see 12 Ency. Forms 557.

(l) *Nash v. Giles* (1926), 96 L. J. (K. B.) 216; Digest (Supp.).

(m) *Re Hanwell U.D.C. and Smith* (1904), 68 J. P. 496; 26 Digest 531, 2300.

Cf. *Walthamstow Local Board v. Staines* [1891] 2 Ch. 606; 26 Digest 538, 2372.

(n) *Croydon R.D.C. v. Betts*, [1914] 1 Ch. 870; 26 Digest 536, 2358. As to what constitutes a separate property, see *Altringham U.D.C. v. O'Brien* (1927), 91 J. P. 140; Digest (Supp.).

(o) Service should be effected in one (or more) of the modes already referred to in connection with the service of the notices to pave (*ante*, p. 390). For form of notice of apportionment, see 12 Ency. Forms 559.

(p) P.H.A., 1875, s. 237; *Midland Rail. Co. v. Watton* (1886), 17 Q. B. D. 30; 26 Digest 533, 2323; *Derby Corpns. v. Grudgings*, [1894] 2 Q. B. 496; 26 Digest 535, 2341.

(q) *Folkestone Corpns. v. Brooks*, [1893] 3 Ch. 22; 26 Digest 531, 2294. Where the purported notice does not dispute the apportionment, but only the liability of the owner, there is no matter which can be referred to arbitration (*West Hartlepool Corpns. v. Robinson* (1897), 62 J. P. 35; 26 Digest 547, 2448).

(r) 13 Halsbury's Statutes 702–704. See title ARBITRATION.

expenses (*s*). The jurisdiction of the arbitrator is limited to the decision of the question of apportionment; that is to say, what is the proper proportion of the whole expenses to be paid by the person who has given notice of dispute, and he has no power to inquire into the reasonableness of the whole expenses which he has to apportion (*t*). If the disputant fails to appoint an arbitrator and withdraws his notice, there is no matter in dispute which the local authority can take to arbitration, and if they proceed *ex parte* any award which is made will be a nullity (*u*).

The arbitrator's award is final and binding on all parties to the arbitration (*a*), but does not bind any owner not a party to the arbitration (*b*), and, even as between the parties, cannot be enforced under the Arbitration Act, 1889, sect. 12 (*c*) (*d*).

Where an apportionment is found to be invalid, whatever may be the reason, the surveyor may proceed to make a new apportionment which will be enforceable notwithstanding that proceedings have been instituted on the basis of the original apportionment and have failed by reason of its invalidity (*e*). [1014]

Recovery of Expenses.—After the expiration of three months from the date of the service of the notice of apportionment or the conclusion of any arbitration which may have been commenced within that period, the local authority may recover the expenses as apportioned or as settled on arbitration, together with interest thereon from the date of service of a demand at such rate as the Minister of Health may by order from time to time determine (*f*) from the owners (*g*) in default.

The "owner in default" is the owner of the premises in connection with which the expression is used at the date of the completion of the works (*h*), whether or not he is the owner at the date of service of the notice to pave (*i*) or notice of apportionment and demand for payment (*k*).

(*s*) *Sandgate District Local Board of Health v. Keene*, [1892] 1 Q. B. 881, C. A.; 26 Digest 580, 2293.

(*t*) *Re Stoker and Morpeth Corpns.*, [1915] 2 K. B. 511, C. A.; 26 Digest 531, 2301; *Re Hanwell U.D.C. and Smith* (1904), 68 J. P. 496; 26 Digest 531, 2300; *Re Willesden Local Board and Wright*, [1896] 2 Q. B. 412, C. A.; 26 Digest 532, 2203.

(*u*) *Re Stoker and Morpeth Corpns.*, *supra*.

(*a*) *Handsworth U.D.C. v. Derrington*, [1897] 2 Ch. 433; 26 Digest 528, 2263; P.H.A., 1875, s. 180 (15); 18 Halsbury's Statutes 704.

(*b*) *Tunbridge Wells Local Board v. Akroyd* (1880), 5 Ex. D. 190, C. A.; 26 Digest 532, 2304.

(*c*) 1 Halsbury's Statutes 461.

(*d*) *Re Willesden Local Board and Wright*, *supra*.

(*e*) *Cook v. Ipswich Local Board* (1871), L.R. 6 Q. B. 451; 26 Digest 521, 2220; *Spokes v. Huddersfield Corp.* (1871), 35 J. P. 614; 26 Digest 530, 2234; *Manchester Corp. v. Hampson* (1886), 85 V.W.R. 324; 26 Digest 526, 2250.

(*f*) P.H.A., 1875, ss. 150, 257; 18 Halsbury's Statutes 680, 732; P.H.A., 1925, s. 77; 18 Halsbury's Statutes 1151. At present the rate is fixed at 4 per cent. (M. of H. (Rate of Interest on Private Improvement Expenses) Order, 1934; S.R. & O., 1934, No. 274).

(*g*) Whilst the notice to pave may be addressed to the occupier of the premises, the expenses can be recovered only from the owner, and if the owner is unknown no proceedings can be instituted (*Wealdstone U.D.C. v. Evershed* (1905), 69 J. P. 258; 26 Digest 537, 2306; *Friern Barnet U.D.C. v. Adams*, [1927] 2 Ch. 25; Digest (Supp.)).

(*h*) *East Ham U.D.C. v. Aylett*, [1905] 2 K. B. 22; 26 Digest 533, 2327.

(*i*) *R. v. Swindon Local Board* (1879), 4 Q. B. D. 805; 26 Digest 538, 2319.

(*k*) *Millard v. Bally-with-Heathorpe U.D.C.*, [1905] 1 K. B. 60; 26 Digest 533, 2322.

On proceedings being taken for the recovery of the expenses in any of the following ways, an owner may raise any defence which goes to the root of his liability (*l*), but not one which goes only to its extent (*m*). Thus, in *Derby Corp. v. Grudgings*, where an owner of premises fronting on a street of which the carriageway was, but the footway was not, repairable by the inhabitants at large, had not within the three months allowed for the purpose disputed a notice of apportionment of expenses incurred in making up the whole of the street, it was held that he could not in the course of proceedings for the recovery of the expenses dispute his liability to pay any part of the apportioned sum. On the other hand, had he been able to show that the whole of the street was not a street within the meaning of the section or was unrepairable by the inhabitants at large he would have been entitled to succeed (*n*).

Failure to carry out the requirements of the section, e.g. the fact that no valid notice to pave was served in respect of the premises in respect of which the proceedings are being brought (*o*), is a defence going to the root of an owner's liability (*p*). [1015]

(i.) *Summary Proceedings*.—Before proceedings can be commenced in a court of summary jurisdiction for the recovery of expenses a notice of demand must be served on the owner in default (*q*), and it has been held that the notice of apportionment is not a sufficient demand for this purpose (*r*). The proceedings in the court of summary jurisdiction must be commenced within six months from the date of service of the notice of demand (*r*), though it would appear that there is no limit to the time within which the notice of demand may be served (*s*).

A local authority cannot commence summary proceedings for the recovery of the whole of the expenses apportioned against any property in respect of which they have elected to treat the expenses as private improvement expenses (*a*).

Either party to the proceedings may appeal to the court of quarter sessions from the decision of the justices, or a special case may be stated under the Summary Jurisdiction Acts (*b*). [1016]

(ii.) *County Court Proceedings*.—Where the amount of the expenses to be recovered is less than £50 proceedings may, at the option of the local authority, be taken in the county court (*c*). Such proceedings

(*l*) *Hesketh v. Atherton Local Board* (1873), L. R. 9 Q. B. 4; 26 Digest 533, 2324.

(*m*) *Midland Rail. Co. v. Watton* (1886), 17 Q. B. D. 30; 26 Digest 533, 2325; *Derby Corp. v. Grudgings*, [1894] 2 Q. B. 496; 26 Digest 535, 2341.

(*n*) *Eccles v. Wirral Rural Sanitary Authority* (1886), 17 Q. B. D. 107; 26 Digest 534, 2336.

(*o*) But not that some other owner in the street has not been served (*Sunderland Corp. v. Gray* [1928] Ch. 756; Digest (Supp.).)

(*p*) *Stourbridge U.D.C. v. Butler and Grove*, [1909] 1 Ch. 87; 26 Digest 525, 2242; *Jarrow Local Board v. Kennedy* (1870), L. R. 6 Q. B. 128; 26 Digest 523, 2241; *Farnsworth Local Board v. Compton* (1888), 34 W. R. 334, C. A.; 26 Digest 524, 2243; *Wallsend Local Board v. Murphy* (1889), 61 L. T. 777; 26 Digest 524, 2247.

(*q*) *R. v. Local Government Board* (1882), 10 Q. B. D. 309; 26 Digest 532, 2318.

(*r*) *Greece v. Hunt* (1877), 2 Q. B. D. 389; 26 Digest 532, 2316. For a form of demand, see 12 Eney, Forms 560.

(*s*) *Worley v. St. Mary, Islington, Vestry* (1880), 51 J. P. 106; 26 Digest 499, 2075.

(*a*) *Could v. Bacup Local Board* (1881), 50 L. J. (M. C.) 44; 26 Digest 526, 2258.

(*b*) See titles APPEALS TO THE COURTS and CASE STATED.

(*c*) P.H.A., 1875, s. 261; 18 Halsbury's Statutes 734.

are subject to six months' limitation as if they were instituted in a court of summary jurisdiction (d). [1017]

(iii.) *Recovery as Private Improvement Expenses.*—By the terms of sect. 150, a local authority may by order made within six months from the date of the service of the demand, declare the expenses incurred in the execution of works under the section to be private improvement expenses, and recover them, together with interest thereon at such rate as the Minister of Health may from time to time by order fix (e), by means of a private improvement rate over a period of not more than thirty years (f). Once a local authority have made an order declaring the expenses to be private improvement expenses, they cannot subsequently revoke it and recover the whole of the balance outstanding (g), though they can if they so elect enforce their statutory charge upon the premises in respect of instalments in arrear (h).

[1018]

(iv.) *Payment by Instalments.*—By sect. 257 of the P.H.A., 1875 (i), the local authority are empowered to declare the apportioned expenses to be payable by annual instalments within a period not exceeding thirty years, together with interest at such rate as the Minister of Health may from time to time by order determine (k). The instalments and interest are recoverable summarily from the owner or occupier, and a tenant occupier has the same right to make a deduction from the rent of the premises as in the case of private improvement expenses (l).

[1019]

(v.) *Statutory Charge.*—Until the recovery of the apportioned expenses and interest the same are, by virtue of sect. 257 of the P.H.A., 1875 (m), a charge on the premises in respect of which they are incurred. The charge so created is a charge on the total ownership in the property and, consequently, takes priority over all other charges (n). It is enforceable against the owner of the premises for the time being (o) by action on or an originating summons claiming a declaration of the charge. The proceedings may be commenced either in the High Court, or, where the amount of the charge does not exceed £500, in the county court (p),

(d) *Tottenham Local Board v. Rowell* (1876), 1 Ex. D. 514, C. A.; 26 Digest 535, 2344; *West Ham Local Board v. Maddams* (1876), 1 Ex. D. 516, n.; 26 Digest 535, 2343.

(e) See note (f), ante, p. 394.

(f) P.H.A., 1875, s. 218; 18 Halsbury's Statutes 715. On the question of private improvement rates generally, see the title PRIVATE IMPROVEMENT EXPENSES.

(g) *Gould v. Bacup Local Board* (1881), 50 L. J. (M.C.) 44; 26 Digest 526, 2253.

(h) *Tottenham Local Board of Health v. Rowell* (1880), 15 Ch. D. 378, C. A.; 26 Digest 530, 2353.

(i) 13 Halsbury's Statutes 732.

(k) See note (f), ante, p. 394.

(l) See title PRIVATE IMPROVEMENT EXPENSES.

(m) 18 Halsbury's Statutes 732.

(n) *Birmingham Corp. v. Baker* (1881), 17 Ch. D. 782; 26 Digest 536, 2357. A local authority when enforcing the charge is not entitled to sell the premises free from restrictive covenants, as the person entitled to the benefit of the covenants has no interest in the ownership of the premises subject to the covenant (*Tendring Union Guardians v. Denton*, [1891] 3 Ch. 265; 26 Digest 537, 2364).

(o) *Sunderland Corp. v. Alcock* (1882), 51 L. J. (Ch.) 546; 26 Digest 537, 2363.

(p) County Courts Act, 1894, s. 52; 27 Halsbury's Statutes 115. In *Wesbury-on-Severn Rural Sanitary Authority v. Meredith* (1885), 30 Ch. D. 387; 35 Digest 568, 2292, it was held that, where the amount of the charge is less than £10 an action for its enforcement cannot be maintained in the High Court. As the jurisdiction of the county court is in terms expressed to be "all the jurisdiction of the High Court to hear and determine proceedings . . . for enforcing any charge . . . where the amount owing in respect of the . . . charge does not exceed the sum of £500"

within twelve years (*q*) from the date of the completion of the works (*r*). A local authority need not wait until the expiration of the period within which summary proceedings may be instituted before enforcing the charge (*s*).

Where the owner of any premises is unknown, no proceedings for the enforcement of the charge can be commenced, as the court will not allow substituted service on unknown defendants (*t*).

Where there are a number of premises in common ownership, the local authority are not entitled to a single charge on all the premises in respect of the aggregate amount of the apportioned expenses, but only to a separate charge on each of the premises for its respective proportion of the expenses of the works (*u*).

The charge arising under sect. 257 should be registered as a local land charge under the Land Charges Act, 1925, in Part II. of the Register of Local Land Charges immediately on the completion of the works (*v*). [1020]

Contribution by Local Authority.—The P.H.A., 1925 (*w*), empowers a local authority, if they think fit, by resolution passed at any time after the service of notices to pave, to contribute the whole or any part of the expenses of the works. It would appear that this power to contribute must be exercised generally for the benefit of the owners of all the premises in any street, and not for the exclusive benefit of a single owner or group of owners. [1021]

Appeal to the Minister of Health.—An owner who deems himself aggrieved has a right of appeal by memorial addressed to the Minister of Health (*x*). The appeal must be made within twenty-one days of the service of a valid demand for payment of the apportioned expenses, this having been held to be the "notice of decision" referred to in the section (*y*). Any proceedings which may have been commenced before the appeal is lodged are to be stayed upon the service of a copy of the memorial upon the local authority (*z*). For procedure on appeals to the Minister of Health generally, see title APPEALS TO MINISTERS. [1022]

Borrowing by the Local Authority.—See section on "Financial Provisions," post, p. 409. [1023]

(County Courts Act, 1934, s. 52; 21 Halsbury's Statutes 115), it would appear that a charge for £10 cannot be enforced at all until by reason of the accumulation of arrears of interest it grows in excess of that sum.

(*g*) Real Property Limitation Act, 1874, s. 8; 10 Halsbury's Statutes 471.

(*r*) *Tottenham Local Board of Health v. Rowell* (1880), 15 Ch. D. 378, C. A.; 26 Digest 586, 2353; *Re Bettsworth and Richer* (1888), 37 Ch. D. 555; 26 Digest 536, 2359; *Hornsey Local Board v. Monarch Investment Building Society* (1889), 24 Q. B. D. 1; 26 Digest 537, 2360; *Re Allen and Driscoll's Contract*, [1904] 2 Ch. 226, C. A.; 26 Digest 537, 2361.

(*s*) *Sunderland Corp. v. Priestman*, [1927] 2 Ch. 107; Digest (Supp.).

(*t*) *Wealdstone U.D.C. v. Evershed* (1905), 69 J. P. 258; 26 Digest 537, 2366; *Frien Barnet U.D.C. v. Adams*, [1927] 2 Ch. 25; Digest (Supp.).

(*u*) *Croydon R.D.C. v. Betts*, [1914] 1 Ch. 870; 26 Digest 536, 2358. As to what constitutes a single property, see *Altringham U.D.C. v. O'Brien* (1927), 91 J. P. 149; Digest (Supp.).

(*v*) Land Charges Act, 1925, s. 15; 15 Halsbury's Statutes 538; Local Land Charges Rules, 1934; S.R. & O., 1934, No. 285, cc. 5, 7.

(*w*) S. 81; 18 Halsbury's Statutes 1152.

(*x*) P.H.A., 1875, s. 268; 18 Halsbury's Statutes 736.

(*y*) *R. v. Local Government Board* (1882), 10 Q. B. D. 309; 26 Digest 582, 2318; *R. v. Local Government Board, ex parte Thorp* (1914), 79 J. P. 248; 38 Digest 154, 43.

(*z*) P.H.A., 1875, s. 268, *supra*.

THE PRIVATE STREET WORKS ACT, 1892

Application and Construction.—The Private Street Works Act, 1892 (*a*), which is to be construed as one with the P.H.A. (*b*) and is in force in all rural districts by virtue of the provisions of the L.G.A., 1929 (*c*), may be put in force in any urban area upon its adoption by the local authority in the manner prescribed in the Act (*d*). Neither sects. 150—152 of the P.H.A., 1875, nor sect. 41 of the P.H.A. Amendment Act, 1890 (*e*), apply to any district in which the Private Street Works Act, 1892, is in force (*f*), but where, prior to the adoption of this Act, notices under the P.H.A. code have been served, the validity of such notices is not prejudiced by this provision (*g*). [1024]

Procedure under the Act.—As under the P.H.A. code, a local authority operating under the Private Street Works Act, 1892, are empowered to deal with any street or part of a street which is not seweried, levelled, paved, metalled, flagged, channelled, made good and lighted to their satisfaction. In such a case the local authority must first pass a resolution to do such of the private street works (*h*) as they consider necessary (*i*). The resolution may, by the express terms of the section, include several streets or parts of streets, or may be limited to any part or parts of a street (*k*). In this Act there is no provision corresponding to that contained in the last paragraph of sect. 150 of the P.H.A., 1875 (*l*), enabling a local authority to carry out at the expense of the frontagers private street works in a street or road of which a part is or may be a public footpath or a highway repairable by the inhabitants at large as fully as if the whole of such street or road was a highway not so repairable (*m*). In such a case an authority proceeding under the Act of 1892 cannot operate the provisions of the Act except as regards the portions of the street or road which are not comprised in the public footpath or highway repairable by the inhabitants at large, and then, as it would appear, only when they are able to show affirmatively which are the portions not comprised in the old highway. Where there is a longitudinal strip added at the side of an existing highway so as to form in itself a "new street," this may be made up separately and the expenses charged against the owners of the premises fronting, adjoining or abutting on the strip as in the case of *Richards v. Kessick* (*n*) referred to in connection with the P.H.A. code (*o*). Where, however, a longitudinal strip of an existing street (*e.g.* a footpath) is being made up separately as being "part

(*a*) 9 Halsbury's Statutes 193—200.

(*b*) Private Street Works Act, 1892, s. 1; 9 Halsbury's Statutes 193.

(*c*) S. 30 (2); 10 Halsbury's Statutes 904.

(*d*) Ss. 2, 8; 9 Halsbury's Statutes 193, 104. See title ADOPTIVE ACTS.

(*e*) 13 Halsbury's Statutes 686—687, 840. See section Public Health Acts Code, above.

(*f*) Private Street Works Act, 1892, s. 25; 9 Halsbury's Statutes 205.

(*g*) *Heston and Isleworth U.D.C. v. Groul*, [1897] 2 Ch. 306, C. A.; 26 Digest 539, 2381.

(*h*) *I.e.* sewerering, levelling, paving, metalling, channelling, flagging, making good, or providing with proper means of lighting (Private Street Works Act, 1892, s. 6 (1); 9 Halsbury's Statutes 196).

(*i*) Private Street Works Act, 1892, s. 6 (1), *supra*.

(*j*) As to what is a "street," see *ante*, p. 888.

(*l*) 18 Halsbury's Statutes 686.

(*m*) See *ante*, p. 887.

(*n*) (1888), 57 L. J. (M. C.) 48; 20 Digest 520, 2214.

(*o*) See *ante*, p. 887.

of a street," the cost of the works must be apportioned among the owners of the premises on both sides of the street (*p*).

Sect. 6 (1) of the Act enables a local authority (as does sect. 150 of the P.H.A., 1875 (*q*)) to require the execution of private street works in any street "from time to time" until such street becomes a highway repairable by the inhabitants at large and so passes altogether beyond the scope of the Act. This proposition is, as in the case of sect. 150 (*q*), subject to the limitation that works of seweraging the street once carried out to the satisfaction of a local authority are not to be required to be carried out again at the expense of the owners (*r*). [1025]

Provisional Apportionment, etc.—After the passing of the first resolution the authority's surveyor must prepare as respects each street or part of a street: (i.) a specification of the private street works referred to in the resolution; (ii.) an estimate of the probable expenses of the works; and (iii.) a provisional apportionment of the estimated expenses among the premises liable to be charged therewith under the Act (*s*).

The specification must describe generally the works and things to be done, and in the case of structural works must specify as far as may be the foundation, form, material and dimensions thereof (*t*). Where applicable the specification may be supplemented by plans and sections showing the constructive character of the works, and the connections (if any) with existing streets, sewers or other works, and the lines and levels of the works, subject to such limits of deviation as are indicated on the plan and sections respectively (*a*). The works which may be carried out in any street are all or any or those mentioned in sect. 6 of the Act (*b*), viz. seweraging, levelling, paving, metalling, flagging, channelling or making good, or providing with proper means of lighting. The words "paving, metalling and flagging" include macadamising, asphalting, gravelling, kerbing and every method of making a carriageway or footway (*c*). The local authority may also include as part of the scheme any works which they think necessary for bringing the street or part of a street as regards sewerage, drainage, level or other matters, into conformity with any other streets (whether or not repairable by the inhabitants at large), and they may include the provision of separate sewers for the reception of sewage and surface water respectively (*d*).

(*p*) *Clacton Local Board v. Young & Sons*, [1895] 1 Q. B. 395; 26 Digest 540, 2389.

(*q*) 13 Halsbury's Statutes 686; see *ante*, p. 388.

(*r*) See *ante*, pp. 388–389, and the cases there cited.

(*s*) S. 6 (2); 9 Halsbury's Statutes 196. For a form of the provisional apportionment, see 12 Ency. Forms 567.

(*t*) Private Street Works Act, 1892, Sched., Part I.; 9 Halsbury's Statutes 205.

(*a*) *Ibid.*

(*b*) 9 Halsbury's Statutes 196.

(*c*) Private Street Works Act, 1892, s. 5; 9 Halsbury's Statutes 195.

(*d*) *Ibid.*, s. 9 (1); 9 Halsbury's Statutes 199. The powers contained in this section with regard to the provision of sewers do not, it is thought, enable a local authority to require fresh works of seweraging after a street as such has already been severed to their satisfaction. A local authority may, however, include a sewer of larger size than that actually required for the purposes of the street which is being dealt with, provided that they charge the owners with that proportion only of the cost which would have been chargeable had a sewer of the size required for purposes of the street only been included (*Acton U.D.C. v. Watts* (1903), 67 J. P. 400; 26 Digest 529, 2279).

A local authority in whose area sect. 35 of the P.H.A., 1925 (e), is in force, whether by adoption in the case of urban authorities (f), or by virtue of the L.G.A., 1929 (g), in the case of authorities exercising highway powers in rural areas, may, when carrying out private street works in any street, vary the relative widths of the carriageway and footway or footways in the same manner and subject to the same conditions as a local authority proceeding under the P.H.A. code (h). Where the section is not in force, the local authority probably has no power to require a variation in the relative widths of the carriageway and footways (i).

Where, in any rural district, the county council are the authority administering the provisions of the Private Street Works Act, 1892, the county surveyor when preparing his specification must, if and so far as the works include sewers, consult the R.D.C. (k).

The estimate must show the particulars of the probable cost of the whole works, including a commission not exceeding £5 per centum (in addition to the estimated actual cost) which the local authority decide to charge (l) in respect of surveys, superintendence and notices (m).

The provisional apportionment must state the amounts charged on the respective premises and the names of the respective owners (n) or reputed owners (o), and also whether the apportionment is made according to the frontage of the respective premises or not, and the measurements of the frontages, and the other considerations (if any) on which the apportionment is based (oo). Under the Private Street Works Act, 1892, an apportionment is not necessarily to be made having regard only to the frontage of the respective premises fronting, adjoining or abutting on the street (p) in which street works are to be carried out. This basis is, of course, regarded as the normal one and applies unless the local authority resolves otherwise, but provision is made whereby the local authority may, if they think it just (q), resolve that in settling the apportionment regard shall be had to considerations other than frontage, viz.: (a) the greater or less degree of benefit to be derived by any premises from the works; and (b) the amount or value of any work already done by the owners or occupiers of any such premises (r). They may also, if they think it just, include any premises which do not front, adjoin or abut on the street or part of a street, but access to which is had from the street or part of a street

(e) 13 Halsbury's Statutes 1130.

(f) For mode of adoption, see P.H.A., 1925, s. 2; 13 Halsbury's Statutes 1115, and title *ADOPTIVE ACTS*.

(g) S. 30 (2), Sched. I, Part I.; 10 Halsbury's Statutes 904, 975.

(h) See *ante*, p. 388.

(i) See *Robertson v. Bristol Corpns.*, [1900] 2 Q. B. 108, C. A.; 26 Digest 527, 2259.

(h) L.G.A., 1929, Sched. I., Part I., *supra*.

(l) Private Street Works Act, 1892, s. 6 (2); 9 Halsbury's Statutes 199.

(m) *Ibid.*, Sched., Part I.; 9 Halsbury's Statutes 205.

(n) For the meaning of "owner," see *ante*, p. 384.

(o) A reputed owner is a person reasonably believed by the local authority to be the owner (*Wirral R.D.C. v. Carter*, [1903] 1 K. B. 646; 26 Digest 543, 2409).

(oo) As to the particulars required, see *Smith v. Birkenhead Corpns.*, [1938] 1 K. B. 288, [1937] 4 All E. R. 75; Digest (Supp.).

(p) For the meaning of "premises fronting adjoining or abutting" on a street, see *ante*, p. 385.

(q) It is not necessary, though it is desirable, that the authority should expressly state in their resolution that they consider it just to exercise this power (*Oakley v. Merthyr Tydfil Corpns.*, [1922] 1 K. B. 409; 26 Digest 541, 2390).

(r) Private Street Works Act, 1892, s. 10; 9 Halsbury's Statutes 199.

through a court, passage or otherwise (s) and which, in their opinion, will be benefited by the works, and may fix the sum or proportion to be charged against any such premises accordingly (t). The authority's discretion as to whether or not regard should be had to considerations other than frontage or as to the inclusion of premises having access but no frontage to a street is not subject to review by a court of summary jurisdiction purporting to act under sect. 8 of the Act (u). In either case, however, an appeal will lie by memorial to the Minister of Health under the P.H.A., 1875, sect. 268 (a). [1026]

Exempted Premises.—As under the P.H.A. code, certain premises are exempted either wholly or to a limited degree from the payment of apportioned expenses. They must, however, be shown in the provisional apportionment (b). [1027]

(i.) *Churches and Chapels.*—By sect. 16 of the Private Street Works Act, 1892 (c), exemption from the payment of private street works expenses is conferred upon the incumbent or minister or trustee of any church, chapel or place appropriated to public religious worship for the time being exempt from poor rates. By the inclusion of trustees the exemption is extended to many nonconformist places of worship which were outside the exemption contained in the P.H.A. code (d). Otherwise the exemptions are couched in similar language, and reference should be made to the paragraph headed "Churches, etc.," in the section relating to the P.H.A. code (e). [1028]

(ii.) *Premises extra commercium.*—These are exempt to the same extent and for the same reasons as under the P.H.A. code (f). [1029]

(iii.) *Crown Property.*—This is exempt to the same extent and for the same reasons as under the P.H.A. code (g). [1030]

(iv.) *Conservators of the River Thames and Port of London Authority.*—The Private Street Works Act, 1892, does not extend to prejudice or derogate from the estates, rights and privileges of the Conservators of the River Thames, or render them liable to any charges or payments in respect of any of their works on or upon the shores of the River Thames (h). The benefit of this provision has been extended to and continued in favour of the Port of London Authority (i). [1031]

(v.) *Railway and Canal Companies.*—By sect. 22 of the Private Street Works Act, 1892 (k), a partial exemption is conferred upon railway and canal companies as respects land which, being in their

(s) The words "court, passage or otherwise" must be construed *cujusdam generis* and do not include another street (street being here understood in its natural sense) (*Neacquay U.D.C. v. Rickard*, [1911] 2 K. B. 846; 26 Digest 541, 2391; *Chatterton v. Glaston R.D.C.*, [1915] 3 K. B. 707; 26 Digest 541, 2395; *Oakley v. Merthyr Tydfil Corp.*, [1922] 1 K. B. 499; 26 Digest 541, 2396).

(t) Private Street Works Act, 1892, s. 10; 9 Halsbury's Statutes 109.

(u) 9 Halsbury's Statutes 108. *Bridgewater Corp. v. Stone* (1908), 99 L. T. 806; 26 Digest 545, 2423; *Hornchurch U.D.C. v. Webber*, [1938] 1 K. B. 698; [1938] 1 All E. R. 309; Digest (Supp.).

(a) 13 Halsbury's Statutes 736. *R. v. Minister of Health, ex parte Aldridge*, [1925] 2 K. B. 363; 26 Digest 545, 2433.

(b) *Herne Bay U.D.C. v. Payne and Wood*, [1907] 2 K. B. 180; 26 Digest 544, 2425.

(c) 9 Halsbury's Statutes 202.

(d) P.H.A., 1875, s. 151; see *ante*, p. 301.

(e) See *ante*, p. 391.

(f) See *ante*, p. 391.

(g) See *ante*, p. 392.

(h) Private Street Works Act, 1892, s. 26; 9 Halsbury's Statutes 205.

(i) Port of London (Consolidation) Act, 1920, s. 202.

(k) 9 Halsbury's Statutes 204.

ownership, has no direct communication with the street in respect of which private street works expenses are to be or have been incurred and upon which such land fronts, adjoins or abuts, and, further, was, at the time when the street was laid out, used by the company solely as a part of their line of railway, canal, or siding, station, towing path or works (l). The benefit of the section does not apply as respects street works in any street constructed prior to the date of the adoption of the Act by the local authority. Where a railway or canal company are exempted from payment of expenses by virtue of this provision, the local authority are empowered to recover from the owners of the premises included in the apportionment and in such proportion as their surveyor determines, the expenses which, but for such provision, would have been recoverable from the company. If the company subsequently cause a means of communication to be constructed between the land and the street their liability revives, and the local authority may recover from them the expenses apportioned against the land. When such expenses are recovered the local authority must divide them among the owners for the time being included in the apportionment in such proportion as shall be settled by the surveyor.

[1032]

Approval of Provisional Apportionment, etc.—When the surveyor has completed the preparation of the specification, plans, sections, estimate and provisional apportionment, they must be submitted to the local authority who may by resolution approve them respectively with or without modification as they think fit (m). [1033]

Publication of the Provisional Apportionment, etc.—The resolution approving the specification, plans, sections, estimate and provisional apportionment must be published once in each of two successive weeks in some local paper circulating in the district and must also be publicly posted in or near to the street to which it relates once at least in each of three successive weeks (n). In addition, within seven days from the first publication a copy of the resolution must be served on the owners (o) of the premises shown as liable to be charged (p) in the provisional apportionment (q). The mode of service of the copy is governed by sect. 267 of the P.H.A., 1875 (r). [1034]

Deposit of Plans, etc.—The specification, plans, sections, estimate and provisional apportionment (or certified copies thereof) must be

(l) As to what user is within the terms of the section, see *R. v. Jones and Barry U.D.C., ex parte Metia* (1907), 90 L. T. 723; 26 Digest 542, 2491; *Re an Arbitration between the Carlisle Corp., and the Executors of S.G. Saul* (1907), 71 J. P. 502.

(m) Private Street Works Act, 1892, s. 6 (2); 9 Halsbury's Statutes 196. For form of resolution, see 12 Ency. Forms 568.

(n) *Ibid.*, s. 6 (3), Schedule II.; 9 Halsbury's Statutes 197, 206.

(o) The copy must be served on the actual owner, service on a reputed owner not being sufficient (*Wirral R.D.C. v. Carter*, [1908] 1 K. B. 646; 26 Digest 543, 2409). If, however, a notice is served on a reputed owner who fails to give notice of objection to the authority's proposals under s. 7 head (f) (see post, p. 404), the proportion of the expenses attributable to the premises will ultimately be recoverable from him (*Wallasey U.D.C. v. Walker (W. H.) & Co.* (1906), 79 J. P. 199; 26 Digest 547, 2446).

(p) Including any owners who are, for any reason, exempt from the payment of the expenses (see *Herne Bay U.D.C. v. Payne and Wood*, [1907] 2 K. B. 180; 26 Digest 544, 2425).

(q) Private Street Works Act, 1892, s. 6 (3). For a form of notice, see 12 Ency. Forms 569.

(r) See ante, p. 890.

kept deposited at the offices of the local authority for one calendar month from the date of the first publication of the copy of the resolution of approval, and open to inspection at all reasonable times (*s*). The fact that the documents mentioned are deposited does not impose any duty on the frontagers to inspect them (*t*). [1035]

Objections to Provisional Apportionments, etc.—At any time during the month the plans, etc., are on deposit, the owner (*u*) of any premises shown in the provisional apportionment as liable to be charged with any part of the expenses (*a*) may object to the proposals of the authority on any of the grounds contained in sect. 7 of the Act (*b*). There is no special form of notice prescribed (*c*), but it must be in writing (*d*), and must be explicit and unequivocal, exemplifying a definite and unequivocal objection to the proposals (*e*). The notice must be served on the local authority within the period mentioned. Service may be effected in any of the ways mentioned in sect. 267 of the P.H.A., 1875 (*f*), the local authority's offices being regarded as their residence (*g*).

An owner who fails to exercise his right of objection within the time allowed will not be permitted to raise in any subsequent proceedings any matter which might have been made the subject of an objection under the section (*h*). [1036]

Grounds of Objection.—An objection to the provisional apportionment must be of such a nature as to fall within one or more of the six heads of objection contained in sect. 7 (*i*).

- (a) That an alleged street or part of a street is not or does not form part of a street within the meaning of the Private Street Works Act, 1892.
- (b) That a street or part of a street is (in whole or in part) a highway repairable by the inhabitants at large.

What constitutes a street within the meaning of the Private Street Works Act, 1892, has already been considered in the first section of this title (*k*). The two grounds of objection overlap to some extent, and, where an objection is made under the first, evidence will be admissible to show that a street is a highway repairable by the

(*s*) Private Street Works Act, 1892, s. 6 (3); 9 Halsbury's Statutes 197.

(*t*) *Horridge v. Makinson* (1915), 84 L. J. (K. B.) 1294; 26 Digest 542, 2407.

(*u*) It is provided by s. 7 of the Act; 9 Halsbury's Statutes 197, that for the purposes of the Act "joint tenants or tenants in common may object through one of their number authorized in writing under the hands of the majority of such joint tenants or tenants in common."

(*a*) *Quare*, whether this includes an owner who is exempt from payment of private street works expenses (see *Herne Bay U.D.C. v. Payne and Wood*, [1907] 2 K. B. 180, per Lord ALVERSTONE, C.J., at p. 186; 26 Digest 544, 2425).

(*b*) 9 Halsbury's Statutes 197.

(*c*) For a suitable form, see 12 Ency. Forms, 570.

(*d*) Private Street Works Act, 1892, s. 7, *supra*.

(*e*) *Southampton Corp. v. Lord* (1903), 67 J. P. 189, C. A.; 26 Digest 543, 2414.

(*f*) 18 Halsbury's Statutes 785; see *ante*, p. 390.

(*g*) Cf. *Mason v. Bibby* (1864), 2 H. & C. 881; 38 Digest 176, 182; *Newport Corp. v. Lang* (1892), 57 J. P. 199; 38 Digest 176, 183; *R. v. Braithwaite*, [1918] 2 K. B. 319; 38 Digest 176, 180.

(*h*) Private Street Works Act, 1892, s. 8 (2); 9 Halsbury's Statutes 198; *Woodford U.D.C. v. Henwood* (1899), 64 J. P. 148; 26 Digest 543, 2418; *Wallasey U.D.C. v. Walker (W. H.) & Co.* (1906), 70 J. P. 199; 26 Digest 547, 2445; *Teddington U.D.C. v. Vile* (1906), 70 J. P. 381; 26 Digest 547, 2444; *Porthcawl U.D.C. v. Bragden*, [1917] 1 Ch. 534; 26 Digest 547, 2446.

(*i*) *Supra*.

(*k*) See *ante*, p. 388.

inhabitants at large although no objection has been made under the second head (*l*).

Where a court of summary jurisdiction, on the hearing of an objection under the second head, finds a street to be a highway repairable by the inhabitants at large, the question becomes *res judicata* and cannot be reopened in further proceedings under the Act (*m*).

- (c) That there has been some material informality, defect or error in or in respect of the resolution, notice, plans, sections or estimate.

For the formalities required by the Act with regard to the resolutions, notices, plans, sections and estimate, and the matters required to be contained therein, reference should be made to the earlier parts of this section of the title. It must be noted, however, that if an owner is not served at all with the notice under sect. 6 (*s*) of the Act (*n*) no expenses can be recovered from him, notwithstanding that he makes no objection under this section (*o*).

- (d) That the proposed works are insufficient or unreasonable, or that the estimated expenses are excessive.

The sufficiency of the proposed works must be judged solely on a consideration of how far they are adequate as a means to effecting their proposed object. An objection cannot be raised under this head on the ground that further works should be required in addition to those contained in the local authority's proposals (*p*). On an objection that the proposed works are unreasonable, the court is entitled to consider (*inter alia*) whether the proposed works are reasonable in the sense that it is reasonable that such works should be done at the frontagers' expense (*q*).

- (e) That any premises ought to be excluded from or inserted in the provisional apportionment.

An owner cannot by making an objection under this head secure the inclusion in the provisional apportionment of premises not fronting, adjoining or abutting on the street unless the local authority have passed a resolution under sect. 10 for the inclusion of such premises (*qq*).

- (f) That the provisional apportionment is incorrect in respect of some matter of fact to be specified in the objection or (where the provisional apportionment is made with regard to other considerations than frontage (*r*)) in respect of the degree of benefit to be derived by any persons, or the amount or value of any work already done by the owner or occupier of any premises.

Unless the local authority have resolved to have regard to considerations other than frontage, the question of degree of benefit cannot be raised before the justices (*s*). [1087]

(*l*) *Carey v. Bezhill Corpns.*, [1904] 1 K. B. 142; 26 Digest 543, 2417.

(*m*) *Wakefield Corpns. v. Cooke*, [1904] A. C. 31; 26 Digest 543, 2419.

(*n*) 9 Halsbury's Statutes 197. See *ante*, p. 402.

(*o*) *Wirral R.D.C. v. Carter*, [1908] 1 K. B. 646; 26 Digest 543, 2409.

(*p*) *Mansfield Corpns. v. Butterworth*, [1898] 2 Q. B. 274; 26 Digest 544, 2424; *Sheffield Corpns. v. Anderson* (1894), 64 L. J. (M. C.) 44, C. A.; 26 Digest 544, 2422.

(*q*) *Chester Corpns. v. Briggs*, [1924] 1 K. B. 239, *per* SALTER, J., at p. 247; 26 Digest 547, 2427.

(*qq*) *Hornchurch U.D.C. v. Webber*, [1938] 1 K. B. 698; [1938] 1 All E. R. 300; Digest (Supp.).

(*r*) See *ante*, p. 400.

(*s*) *Bridgwater Corpns. v. Stone* (1908), 99 L. T. 806; 26 Digest 545, 2428.

Hearing and Determination of the Objections.—At any time after the expiration of the month during which objections may be made, the local authority may apply to a court of summary jurisdiction to appoint a time for determining the matter of all objections which have been received. A notice of the time and place so appointed (*t*) must then be published in a manner similar to that in which the resolution of approval of the provisional apportionment was published (*u*), and copies of the notice must be served (*a*) upon the objectors (*b*). There is apparently no limitation upon the length of time which the authority may allow to elapse before applying to the justices to fix the time and place for the hearing; but the authority may not proceed with the execution of the proposed works until all the objections to their proposals which have been duly made in accordance with the provisions of the Act have been first heard and determined (*c*).

At the time and place appointed the court of summary jurisdiction may proceed to hear the objections in the same manner as nearly as may be as if the local authority were proceeding against the objectors to enforce payment of a sum of money summarily recoverable. The onus of proof is, in all cases, *prima facie*, on the local authority (*d*), and it is, therefore, for them to begin unless the court in exceptional circumstances directs otherwise.

The court, at the hearing of the objections, has power on the application of either party to quash in whole or in part or to amend the resolution, plans, sections, estimates and provisional apportionment (*e*), and this power extends to the making of amendments even to matters in respect of which no notice of objection has been given (*f*). The powers of amendment conferred upon the justices do not, however, include a power to interfere with the decision of the local authority on any matter which is placed in the authority's discretion, e.g. as regards the making by an authority of a contribution towards the cost of the works (*g*), or their decision as to whether or not the apportionment should have regard to degree of benefit (*h*).

The justices may, if they think fit, adjourn the hearing and direct any further notices to be given. Their discretion in this matter is absolute; but where they have decided upon amendments to the original scheme which are of a material character, it is desirable, though not obligatory upon them, that they should exercise their power in this respect in order that persons affected by the amended scheme may have an opportunity of being heard (*i*).

The costs of the proceedings before the justices are within the discretion of the court, who may, if they think fit, direct that the whole or any part of such costs ordered to be paid by an objector or objectors be paid in the first instance by the local authority and charged as part

(*t*) For a form of notice, see 12 Ency. Forms 570.

(*u*) See *ante*, p. 402.

(*a*) No special mode of service having been prescribed, the notices should be served in accordance with the provisions of s. 207 of the P.H.A., 1875; 18 Halsbury's Statutes 735, as to which see *ante*, p. 390.

(*b*) Private Street Works Act, 1892, s. 8 (1); 9 Halsbury's Statutes 108.

(*c*) *Faulkner v. Hythe Corp.*, [1927] 1 K. B. 532; Digest (Supp.).

(*d*) *Bitskon v. Haslington Corp.*, [1898] 1 Q. B. 294; 26 Digest 543, 2418.

(*e*) Private Street Works Act, 1892, s. 8 (1), *supra*.

(*f*) *Hall v. Bolsover U.D.C.* (1900), 100 L. T. 872; 26 Digest 545, 2429.

(*g*) *Chester Corp. v. Briggs*, [1924] 1 K. B. 239; 26 Digest 547, 2447; *Chatham Corp. v. Wright* (1929), 142 L. T. 451; Digest (Supp.).

(*h*) *Bridgwater Corp. v. Stone* (1908), 99 L. T. 806; 26 Digest 545, 2428.

(*i*) *Twickenham U.D.C. v. Munton*, [1899] 2 Ch. 603; 26 Digest 544, 2426.

of the expenses of the works (*k*) on the premises of the objector or objectors in such proportions as may appear just (*l*).

An appeal lies to quarter sessions under sect. 269 of the P.H.A., 1875 (*m*), from the decision of the court of summary jurisdiction (*n*), and the court may state a special case in accordance with the provisions of the Summary Jurisdiction Acts (*o*). [1088]

Execution of the Works.—If no objections have been made to the local authority's proposals, or if, objections having been made, they have been heard and determined by the justices and the proposals have been approved by the latter body either in the original or in an amended form, the authority may proceed with the execution of the works.

A local authority may at any time amend as they think fit the specification, plans, sections, estimate and provisional apportionment (*p*). If, however, the total estimate in respect of the works is increased, the estimate and provisional apportionment (*q*) have to be published by advertisement and posting in the street as in the case of the resolution of approval (*r*), and copies of the two documents must be served on the owners of the premises affected thereby (*p*). Objections may be made to the increase and apportionment and these are to be determined in like manner to objections to the original proposals (*p*). No period is stated within which the objections may be made nor the grounds of such objections, but it is presumed that these matters are governed by sect. 7 of the Act (*s*). It should be noted that unless the authority increase the *total* estimate, they may apparently re-arrange their proposals entirely without the owners having any right of objection to a court of summary jurisdiction. It is suggested, however, that such a matter might be made the subject of an appeal to the Minister of Health (*t*). [1089]

Final Apportionment.—When the works have been completed and the expenses are ascertained, the surveyor to the local authority must make a final apportionment by dividing the expenses in the same proportions in which the estimated expenses were divided in the original or amended provisional apportionment. Such final apportionment, for which no special form is prescribed (*u*), and which does not require to be submitted to or approved by the local authority, is (subject to the decision of the justices on the objections (if any) made as provided in the Act) conclusive for all purposes (*a*).

A notice of the final apportionment (*b*) must be served (*c*) upon the

(*k*) See *Bell & Sons v. Great Crosby U.D.C.* (1912), 108 L. T. 455 ; 26 Digest 540, 2386.

(*l*) Private Street Works Act, 1892, s. 8 (3), 9 Halsbury's Statutes 198.

(*m*) 18 Halsbury's Statutes 736.

(*n*) *Pearce v. Maidenhead Corp.*, [1907] 2 K. B. 96 ; 26 Digest 545, 2432. See title APPEALS TO THE COURTS.

(*o*) Private Street Works Act, 1892, s. 8 (1). For procedure, see title CASE STATED.

(*p*) *Ibid.*, s. 11 ; 9 Halsbury's Statutes 200.

(*q*) Apparently the documents themselves have to be published.

(*r*) See *ante*, p. 402.

(*s*) 9 Halsbury's Statutes 197. See *ante*, p. 403.

(*t*) See *post*, p. 409.

(*u*) For a suitable form, see 12 Ency. Forms 571.

(*a*) Private Street Works Act, 1892, s. 12 (1) ; 9 Halsbury's Statutes 200.

(*b*) For a form of notice, see 12 Ency. Forms 572.

(*c*) For mode of service, see *ante*, p. 390.

owners of the premises affected thereby (*d*), and the owners of any premises charged with expenses under the apportionment may within one month after such notice object thereto on all or any of the following grounds : (i.) that the actual expenses have without sufficient reason exceeded the estimated expenses by more than fifteen per cent. ; (ii.) that the final apportionment has not been made in accordance with the provisions of the Act ; (iii.) that there has been an unreasonable departure from the specification, plans and sections (*e*).

Any objections received must be determined by a court of summary jurisdiction in the like manner as the objections to the provisional apportionment, and the same provisions as to costs and appeals apply (*f*). If the court finds any of the grounds of objection made good it can quash the apportionment and make a fresh one.

An owner who deems himself aggrieved by the final apportionment on any of the above-mentioned grounds, must, if he wishes to secure redress, object to the final apportionment within the period specified, as he is precluded from raising such matters in any subsequent proceedings (*g*). [1040]

Recovery of Expenses.—Under the Private Street Works Act, 1892, there are five modes in which a local authority may recover the apportioned expenses. They are (1) by summary proceedings, (2) by action, (3) by enforcement of the charge on the premises, (4) as private improvement expenses, and (5) by instalments. Whilst there appears, in general, to be no obligation upon the local authority to serve upon the owners a notice of demand for payment of the apportioned sums, the service of such a notice is a condition precedent to the recovery of the expenses in a court of summary jurisdiction or by action, as it is with reference to the date of the service of the notice that the respective periods of limitation affecting these modes of recovery are reckoned. The notice of the final apportionment is not a notice of demand for this purpose, nor, indeed, can a notice of demand be served until the expiration of the period within which objections to the final apportionment may be made and such objections (if any) have been heard and determined (*h*). [1041]

(i.) *Summary Proceedings.*—A local authority may, at any time within six months of the date of the service of a notice of demand for payment (*i*), institute in a court of summary jurisdiction proceedings against the owner for the time being of premises for the recovery of the apportioned expenses together with interest thereon at the rate of four pounds per centum per annum (*k*) from the date of the final apportionment (*l*). [1042]

(ii.) *By Action.*—As an alternative to taking proceedings in a court of summary jurisdiction for the recovery of the expenses, a local authority may recover such expenses together with interest by action in the High Court or in the county court as a simple contract debt

(*d*) Private Street Works Act, 1892, s. 12 (1) ; 9 Halsbury's Statutes 200.

(*e*) *Ibid.*, s. 12 (2) ; 9 Halsbury's Statutes 200.

(*f*) *Ibid.*, s. 12 (3) ; 9 Halsbury's Statutes 201. See *ante*, p. 405.

(*g*) *Hayles v. Sandown U.D.C.*, [1903] 1 K. B. 160 ; 26 Digest 546, 2443.

(*h*) *Simecox v. Handsworth Local Board* (1881), 8 Q. B. D. 38 ; 26 Digest 524, 2242.

(*i*) *Greco v. Hunt* (1877), 2 Q. B. D. 389 ; 26 Digest 582, 2376.

(*k*) This is the rate at present prescribed by the Minister of Health under s. 77 of the P.H.A., 1925 ; 13 Halsbury's Statutes 1151 (M. of H. (Rate of Interest on Private Improvement Expenses) Order, 1934 ; S.R. & O., 1934, No. 274).

(*l*) Private Street Works Act, 1892, s. 14 ; 9 Halsbury's Statutes 202.

from the owner for the time being of the premises in respect of which the sum is due (*m*). The action must be commenced as against any individual owner within six years of the service upon him of a notice of demand (*n*). The expiry of the period of limitation as against the owner of any premises does not bar the local authority from proceeding against a subsequent owner after service upon him of a demand for payment, the subsequent owner being "the owner for the time being" within the meaning of the section (*o*). [1043]

(iii.) *By Enforcement of the Charge.*—By sect. 18 of the Private Street Works Act, 1892 (*p*), it is provided that any premises included in the final apportionment and all estates and interests from time to time therein shall stand and remain charged with the sum finally apportioned on them, or, if objection has been made to the final apportionment, with the sum determined by the court of summary jurisdiction to be due. The charge, which is to the like effect as the charge under sect. 257 of the P.H.A., 1875 (*q*), affects the property as from the date of the completion of the works (*r*); and as from the date of the final apportionment interest at such rate as the Minister of Health may from time to time determine (*s*) is also charged on the premises (*t*).

The charge has priority over all other charges affecting the property whether created before or after the date of the final apportionment (*u*); but a local authority exercising their power of sale cannot convey the premises free from any restrictive covenants affecting them (*a*).

The local authority are required to keep a register of charges under the Act, and of payments made in satisfaction thereof. The register is to be open to all persons at all reasonable times on payment not exceeding one shilling in respect of each name or property searched for, and copies of any part must be supplied to any person on payment of such reasonable sum as may be fixed by the local authority (*b*). The charge must also be registered as a local land charge under the Land Charges Act, 1925 (*c*).

For the enforcement of the charge the local authority has all the powers and remedies under the Law of Property Act, 1925 (*d*), as if they were mortgagees having powers of sale and lease and of appointing a receiver (*e*). These powers may be exercised without first bringing an action to enforce the charge (*f*), but such an action may be brought if the local authority so elect (*g*).

(*m*) Private Street Works Act, 1892, s. 14; 9 Halsbury's Statutes 202.

(*n*) *Dennerley v. Prestwich U.D.C.*, [1930] 1 K. B. 334; Digest (Supp.).

(*o*) *Ibid.*

(*p*) 9 Halsbury's Statutes 201.

(*q*) 19 Halsbury's Statutes 732. See *ante*, p. 396.

(*r*) *Stock v. McLean*, [1900] 1 Ch. 683; 26 Digest 545, 2436; *Surtees v. Woodhouse*, [1908] 1 K. B. 396; 26 Digest 546, 2437.

(*s*) P.H.A., 1925, s. 77; 13 Halsbury's Statutes 1151; M. of H. (Rate of Interest on Private Improvement Expenses) Order, 1934; S.R. & O., 1934, No. 274, fixes the rate at 4 per cent.

(*t*) Private Street Works Act, 1892, s. 18 (1); 9 Halsbury's Statutes 201.

(*u*) *Birmingham Corp. v. Baker* (1881), 17 Ch. D. 782; 26 Digest 536, 2347.

(*a*) *Tendring Union Guardians v. Denton*, [1891] 3 Ch. 265; 26 Digest 537, 2364.

(*b*) Private Street Works Act, 1892, s. 19 (2); 9 Halsbury's Statutes 201.

(*c*) S. 15; 15 Halsbury's Statutes 538. The register kept under s. 13 of the Private Street Works Act, 1892, *supra*, may be incorporated by reference in the Register of Local Land Charges (Local Land Charges Rules, 1934, r. 14).

(*d*) Ss. 90–110; 15 Halsbury's Statutes 277–293.

(*e*) Private Street Works Act, 1892, s. 18 (1), *supra*.

(*f*) *Payne v. Cardiff R.D.C.*, [1932] 1 K. B. 241; Digest (Supp.).

(*g*) *West Ham Corp. v. Sharp*, [1907] 1 K. B. 445; 26 Digest 546, 2439.

Where the local authority have declared the expenses to be payable by instalments (h), they have a charge on the premises in respect of instalments in arrear as each instalment falls due (i). [1044]

(iv.) *Private Improvement Expenses.*—A local authority may if they so elect recover the apportioned expenses in the same manner as private improvement expenses (k). For a consideration of this method of recovery, see title PRIVATE IMPROVEMENT EXPENSES. [1045]

(v.) *By Instalments.*—A further provision in sect. 12 of the Act (l) gives to the local authority power to declare any apportioned expenses to be payable by instalments. A discussion of this mode of recovery will be found in the section of this title dealing with the P.H.A. code (m). [1046]

Contribution by Local Authority.—A local authority may, if they think fit (n), resolve to contribute the whole or a portion of the expenses of any private street works (o). [1047]

Appeal to the Minister of Health.—The Private Street Works Act, 1892, being construed as one with the P.H.A. (p), an owner who is aggrieved by the decision of a local authority under the former Act on any matter which cannot be made the subject of an objection under sects. 7 or 12 of the Act (q), may appeal to the Minister of Health in accordance with the provisions of the P.H.A., 1875 (r). The memorial of appeal must be lodged with the Minister within twenty-one days of the service of a demand for payment which is, for the purposes of the Act, the "notice of the decision" of the local authority (s).

For a full statement of the formalities, etc., with regard to an appeal, see title APPEALS TO MINISTERS. [1048]

FINANCIAL PROVISIONS

Accounts of a Local Authority.—In addition to the requirement, which applies to all authorities whether operating under the P.H.A. code or under the Act of 1892, that the surveyor to a local authority shall keep separate the accounts of the expenses incurred in the execution of street works in different streets (a), an authority operating under the Private Street Works Act, 1892, is required to keep separate accounts of all moneys expended and recovered by them in the execution of the provisions of the Act relating to private street works (b). [1049]

Expenses of Private Street Works.—All expenses incurred or payable by a local authority in the execution of private street works, whether under the P.H.A. code or under the Private Street Works Act, 1892 (including any contributions which the authority may resolve to make

(h) See *infra*.

(i) *Payne v. Cardiff R.D.C.*, [1902] 1 K. B. 241; Digest (Supp.).

(k) Private Street Works Act, 1892, s. 12; 9 Halsbury's Statutes 200.

(l) *Supra*.

(m) See *ante*, p. 396.

(n) A court of summary jurisdiction cannot interfere with the local authority in the exercise of their discretion in this matter (*Chester Corp. v. Briggs*, [1924] 1 K. B. 239; 26 Digest 547, 2447; *Chatham Corp. v. Wright* (1929), 142 L. T. 431; Digest (Supp.)).

(o) Private Street Works Act, 1892, s. 15; 9 Halsbury's Statutes 202.

(p) *Ibid.*, s. 1; 9 Halsbury's Statutes 193.

(q) See *ante*, pp. 403, 406.

(r) S. 268; 13 Halsbury's Statutes 730; *R. v. Minister of Health, ex parte Aldridge*, [1925] 2 K. B. 363; 26 Digest 545, 2433.

(s) *R. v. Local Government Board* (1882), 10 Q. B. D. 309; 26 Digest 532, 2318.

(a) See *ante*, p. 393.

(b) Private Street Works Act, 1892, s. 21 (1); 9 Halsbury's Statutes 204.

towards the expenses of the works (c)), are to be discharged, in the case of a county council, out of the county fund (d), or, in the case of a borough, U.D.C. or R.D.C., out of the general rate fund of the authority (e). [1050]

Borrowing Powers.—A local authority may, with the consent of the Minister of Health, borrow such sums as may be required for private street works (f). In the Sixth Annual Report of the M. of H. (1924-1925) it was stated that :

"With a view to easing the burden upon owners, the department are now generally willing to sanction a loan to the local authority for a period of ten years to enable them to spread the cost of the work over that period, on the understanding that a similar period is allowed to the frontagers for repayment of the cost to the local authority."

In the Private Street Works Act, 1892 (g), it is expressly provided that all moneys recovered by a local authority under that Act in respect of street works should be applied in the repayment of moneys borrowed for the purpose of executing private street works, or, if there is no such loan outstanding, in such manner as may be directed by the Minister of Health. There is no corresponding provision in the P.H.A., 1875. The M. of H. would, however, normally require the application of moneys recovered in respect of street works executed under sect. 150 towards the reduction of any loan which might have been raised for that purpose. [1051]

TOWNS IMPROVEMENT CLAUSES ACT, 1847, SECT. 53 (h).

In areas in which this Act is in force by reason of its incorporation in a special Act (i), the local authority may as respects any street which, although a public highway at the passing of the special Act, has not theretofore (k) been well and sufficiently paved and flagged or otherwise made good, cause such street (or such parts thereof as have not been properly paved, etc.) to be paved and flagged or otherwise made good. This power may be exercised whether or not the street to be dealt with is a highway repairable by the inhabitants at large (l); but it does not apply unless the street is a street in the popular sense of the term (m).

The expenses incurred by the local authority in respect of the works are recoverable from the occupiers of the premises abutting on the street by means of a special rate over a period of thirty years, £6 10s. being payable each year in respect of each £100 due (n). [1052]

London.—See title LONDON ROADS AND TRAFFIC, Vol. VIII., p. 262.

(c) See *ante*, pp. 297, 400.

(d) L.G.A., 1938, s. 181; 26 Halsbury's Statutes 405.

(e) *Ibid.*, ss. 185, 188, 191; 26 Halsbury's Statutes 407, 408, 410.

(f) *Ibid.*, s. 195; 26 Halsbury's Statutes 412, read in conjunction with P.H.A., 1875, s. 238; 13 Halsbury's Statutes 722, and Private Street Works Act, 1892, s. 18; 9 Halsbury's Statutes 203.

(g) S. 21 (2); 9 Halsbury's Statutes 204.

(h) 18 Halsbury's Statutes 547.

(i) Towns Improvement Clauses Act, 1847, s. 1; 13 Halsbury's Statutes 531.

(k) In this section "theretofore" is to be construed in its ordinary grammatical sense, and refers to the period before the work is done by the local authority, and not to the period before the passing of the special Act (*Great Western Rail. Co. v. West Bromwich Improvement Commissioners* (1859), 1 E. & E. 806; 26 Digest 519, 2204; *Portsmouth Corp. v. Smith* (1885), 10 App. Cas. 364; 26 Digest 519, 2209).

(l) *Crump v. Chorley Corp.* (1908), 72 J. P. 284; 26 Digest 520, 2210.

(m) *Portsmouth Corp. v. Smith*, *supra*. Cf. *ante*, p. 285.

(n) Towns Improvement Clauses Act, 1847, s. 156; 13 Halsbury's Statutes 532.

PRIVIES

See SANITARY CONVENiences.

PRIVY COUNCIL

	PAGE		PAGE
INTRODUCTION - - - - -	411	BURIAL ACTS - - - - -	412
APPLICATION FOR CHARTER - - - - -	411	MEDICAL AND PHARMACY ACTS - - - - -	412
CINEMATOGRAPH FUND - - - - -	411	PETROLEUM ACTS - - - - -	413

See also titles :

BURIALS ;
CARBIDE OF CALCIUM ;
CHARTERS OF INCORPORATION ;

CONSTITUTIONAL LAW ;
POISONS ;
SUNDAY ENTERTAINMENTS.

Introduction.—The Privy Council is composed of an unlimited number of persons, appointed solely at the pleasure of the Crown without formal grant or letters patent, and no qualification is, in general, legally necessary (*a*). Members are invariably chosen from amongst noblemen of high rank, persons who have held, or hold, high political, judicial or ecclesiastical office at home or overseas, or persons eminent in science and letters, while near relations of the Sovereign and some others are understood to have a prescriptive claim to admission. They take an oath on appointment, enjoy no special salary or emoluments, but are entitled to the style of "Right Honourable," and to precedence next after the eldest sons of barons. The Board of Trade is technically a committee of the Privy Council, but the committee of the Privy Council for Scientific and Industrial Research is now a separate department, though the Lord President remains responsible for it. Orders issued by the council are expressed to be made by the Crown with the advice of the Privy Council, and are called "Orders in Council." [1053]

Application for Charter.—The Privy Council is the department charged with carrying through the charter of incorporation of a borough in pursuance of the royal prerogative. The process has been described in the title CHARTERS OF INCORPORATION (*b*). [1054]

Cinematograph Fund.—Under the Sunday Entertainments Act, 1932, there was established a fund under the direction and control of the Privy Council (*c*). This is called the "Cinematograph Fund,"

(*a*) 6 Halsbury (2nd ed.), 642, 643.
(*c*) S. 2 ; 25 Halsbury's Statutes 922.

(*b*) Vol. III., pp. 127—144.

and sums paid to a local authority in accordance with sect. 1 of the Act (*d*) are to be transmitted to the fund in a manner prescribed by regulations made by the Home Secretary and laid before Parliament. These regulations were made in March, 1933 (*e*). The moneys in the fund, after a sum certified by the Treasury as the amount of expenses incurred by the Privy Council in administering it has been deducted annually as an appropriation in aid of the moneys provided by Parliament for the purposes of the Privy Council, are to be applied as directed by the Privy Council for the purpose of encouraging the use and development of the cinematograph as a means of entertainment and instruction. The accounts of the fund are to be kept in a way directed by the Treasury, and an account submitted annually to the Comptroller and Auditor-General, who must certify and report upon the account, which is then to be laid before Parliament. [1055]

Burial Acts.—By sect. 1 of the Burial Act, 1853 (*f*), His Majesty, by the advice of his Privy Council, may order that no new burial ground may be opened within a certain area, or that after a time specified in the order, burials in certain areas are to be discontinued. Sects. 1 and 2 of the Burial Act, 1855 (*g*), enable Orders in Council to be varied so as to postpone the time for discontinuance of burials, and impose a penalty on persons burying contrary to the provisions of the order. By sects. 1 and 2 of the Burial Act, 1854 (*h*), town councils are invested with the power of providing burial grounds by an order of the Privy Council. By sect. 10 of the Burial Act, 1857 (*i*), Orders in Council may be made for regulating burial grounds by His Majesty on the advice of his Privy Council, and by sect. 23 (*k*) of that Act, Orders in Council may be issued on representation from the Home Secretary, to prevent vaults or other such burial places being injurious to health. [1056]

Medical and Pharmacy Acts.—By the Pharmacy and Poisons Act, 1933, the decision as to what articles are poisons no longer remains with the Pharmaceutical Society with the approval of the Privy Council as laid down in the Acts of 1868 and 1908, but with the Poisons Board, appointed under the Act. The society, however, is represented on the board, and by sect. 4 of the new Act (*l*) the Privy Council may nominate three persons, who need not be members of the society, to be members of the council of the society in addition to the members appointed under its Charter of Incorporation, and these persons are to hold office for such a period as the Privy Council determine.

His Majesty, on the advice of the Privy Council, nominates five members of the General Medical Council (*m*) and two members of the General Nursing Council (*n*). [1057]

(*d*) See title SUNDAY ENTERTAINMENTS.

(*e*) S.R. & O., 1933, No. 110.

(*f*) 2 Halsbury's Statutes 210. See also ss. 3 and 6 of that Act. See title BURIALS AND BURIAL GROUNDS, Vol. II., p. 819.

(*g*) *Ibid.*, 218.

(*h*) *Ibid.*, 214, 215. See also s. 4 of the Burial Act, 1857; *ibid.*, 228.

(*i*) 2 Halsbury's Statutes 232.

(*k*) *Ibid.*, 235.

(*l*) 26 Halsbury's Statutes 565. See title Poisons.

(*m*) The Medical Act, 1886, s. 7; 11 Halsbury's Statutes 717.

(*n*) Nurses Registration Act, 1919, s. 1 and Sched.; 11 Halsbury's Statutes 748, 752.

Petroleum Acts.—Under the Petroleum (Consolidation) Act, 1928 (o), Orders in Council may be made to apply to any substances mentioned in the order, with modifications if so desired, and any such substance will then be included in the definition of petroleum spirit and come under the provisions of the Act. An order has been made under this section in regard to carbide of calcium (p). [1058]

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- (o) S. 19; 13 Halsbury's Statutes 1184.
 (p) See title CARBIDE OF CALCIUM, Vol. II., pp. 411, 412.
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PROBATION OFFICERS

	PAGE		PAGE
DEFINITION	—	413	PROBATION OFFICERS: SALARIES,
STATUTES AND RULES	—	413	EXPENSES, SUPERANNUATION — 414
LOCAL AUTHORITIES	—	414	FINANCIAL ARRANGEMENTS — 415
PROBATION AREAS AND COMMITTEE	—	414	Maintenance of PROBATIONERS — 415
TER	—	—	LONDON — — — — — 415

Definition.—It is judicial, and not local, authorities who are directly concerned with the administration of probation itself. The position of the probation officer is, however, connected, as regards payment of expenses, with local government law and administration; and cannot be made clear without some explanation of probation as a system. The underlying principle is that offenders are released upon entering into recognisances to be of good behaviour, and to come up for punishment if required during a specified period, which must not exceed three years. If the offender is of good behaviour for the whole period the recognisance becomes void and he escapes sentence altogether. Upon a breach of his recognisance he is liable to be brought back to the court to be punished for his original offence. During the period of probation, the offender may be placed under the supervision of a probation officer, whose duty is to assist and befriend him and to report to the court upon his conduct. Probation thus spares the offender from the worst consequences of a conviction and sentence; it leaves him in the open instead of shutting him up in prison and depriving his family of his support; and it provides him with help and guidance, without which he would possibly drift into further crime. It is, besides, a great saving of public money, as compared with imprisonment. This system, established nearly thirty years ago, has met with appreciable success, and is being constantly improved in the light of experience. [1059]

Statutes and Rules.—The principal statute is the Probation of Offenders Act, 1907 (a), which has been amended by the Criminal Justice Administration Act, 1914 (b), the Criminal Justice Act, 1925 (c)

(a) 11 Halsbury's Statutes 365—369.
 (c) *Ibid.*, 395.

(b) *Ibid.*, 371 *et seq.*

(as itself amended by the Criminal Justice (Amendment) Act, 1926 (*d*)) and the Children and Young Persons Act, 1933. The Probation Rules, 1926 (*e*), and the Probation Officers Superannuation Rules, 1926 (*f*), are referred to hereafter. [1060]

Local Authorities.—Certain local authorities are responsible for the payment of expenses connected with probation work, viz. the authority out of whose funds the salary of the clerk to the justices for the petty sessional division concerned is to be paid (*g*), in other words, the council of a borough or a county (*h*). The local authority may, by Rule 86 of the Probation Rules, 1926, delegate all or any of its powers in these matters to a committee of the authority. [1061]

Probation Areas and Committee.—Every petty sessional division is required to have a probation committee, consisting of justices of the peace, for the purpose of organising probation work in its area. There are also certain combined areas which include more than one petty sessional division; these have probation committees, but there must still be a committee for each petty sessional division (*i*).

Probation committees are charged with the duty of paying the salaries, gratuities, superannuation and expenses of probation officers and of persons acting as probation officers under the terms of probation orders. All sums required to meet payments so made by a probation committee are to be defrayed by the local authority in whose area the probation area is situate. If a probation area is situate in the area of two or more local authorities (as may often be the case where it is a combined area) the several authorities concerned shall agree as to apportionment of the expenses; in default of such agreement, the Secretary of State determines the matter (*k*). [1062]

Probation Officers : Salaries, Expenses, Superannuation.—The salaries of probation officers, payable as stated above, by probation committees, are such as, subject to the provisions of Part I. of the Criminal Justice Act, 1925, may be agreed upon by the probation committee and the local authority; or, failing such agreement, determined by the Secretary of State (*l*). Rules 60 to 69 of the Probation Rules, 1926, lay down certain minimum and maximum salaries for whole-time officers, and deal also with the remuneration of part-time officers. Special arrangements are made with regard to probation officers who are agents of a voluntary society.

The rules also provide for the payment of the travelling and other expenses of probation officers (*m*), for the petty expenditure of probation committees (*n*), and for the various financial arrangements between probation committees and local authorities and between probation committees who may share the services of a probation officer (*o*).

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- (*d*) 11 Halsbury's Statutes, 426.
 - (*e*) S.R. & O., 1926, N.577/L.17.
 - (*f*) S.R. & O., 1926, N.1854/L.36.
 - (*g*) Criminal Justice Act, 1925, s. 10; 11 Halsbury's Statutes 401.
 - (*h*) *Vide* Stone's Justices' Manual, Part I., "The Court and the Clerk," for a detailed explanation.
 - (*i*) Criminal Justice Act, 1925, s. 2 (2); 11 Halsbury's Statutes 396.
 - (*k*) *Ibid.*, s. 5 (1); *ibid.*, 398.
 - (*l*) *Ibid.*, s. 1 (2).
 - (*m*) S.R. & O., 1930, No. 577/L.17, rr. 70—74.
 - (*n*) *Ibid.*, r. 75.
 - (*o*) *Ibid.*, rr. 70—84.

By the Probation Officers Superannuation Rules, 1926, full-time officers, with a few exceptions, are entitled to pension on retirement through ill-health or upon the attainment of the age of sixty-five years. The rules established a superannuation fund on a contributory basis, to be managed by a body of managers appointed by the Secretary of State. Special arrangements are made with voluntary societies in respect of their agents who are probation officers. [1063]

Financial Arrangements.—The liability of a local authority has been noted above. Grants-in-aid may, however, be made by the Secretary of State, with the approval of the Treasury, subject to such conditions as may be imposed (*p*). If the Secretary of State withholds the whole or any part of such a grant which would have been payable to a local authority in any year, he may also direct that the local authority shall be relieved of its liability in whole or in part for that year (*q*). [1064]

Maintenance of Probationers.—Persons are often placed on probation with a special condition attached to the recognisance that they shall reside in a particular place. In such cases the local authority may contribute towards their maintenance, and the Secretary of State may make grants-in-aid (*r*). [1065]

London.—Sect. 9 (1) of the Criminal Justice Act, 1925, provides that Part I. (Probation of Offenders) of that Act shall apply (with certain modifications specified in the sub-section) to the Metropolitan Police Court district. Each division of the district shall be deemed to be a petty sessional division. Sect. 9 (2) provides that, in the application of this Part of the Act to the City of London, the City shall be deemed to be a petty sessional division and the provisions relating to the constitution of combined areas shall not apply. [1066]

(*p*) Criminal Justice Act, 1925, s. 5 (3); 11 Halsbury's Statutes 398.

(*q*) *Ibid.*, s. 5 (4).

(*r*) *Ibid.*, s. 5 (2), (3).

PROCEDURE

See COMMITTEES; MEETINGS.

PROCESSIONS

	PAGE		PAGE
INTRODUCTION - - -	416	BUILDINGS, ETC., ON ROUTE	418
CONTROL OF ROUTES - - -	416	LONDON - - - - -	418
THE PUBLIC ORDER ACT, 1936	417		

*See also titles : HIGHWAY NUISANCES ;
SAFETY PROVISIONS OF BUILDINGS AND STANDS.*

Introduction.—Until the passing of the Public Order Act, 1936 (a), the subject of public processions was dealt with by statute only in regard to the control of routes as described below. There is no common law right to hold processions, but it has been a usual method of public demonstration, and cases on the subject show that the only objections have been in respect of their being a nuisance on the highway, or as an unlawful assembly causing fear to passers-by or those living on the route. In *Beatty v. Gilbanks* (b), where a Salvation Army procession was followed by a noisy mob and the leader was prosecuted for causing an unlawful assembly, it was held that to constitute an unlawful assembly either there must be an illegal object, or if the object was legal, the carrying of it out must have been tumultuous. It was held also in that case that disturbances caused by other people antagonistic to those walking in the procession would not cause those in the procession to be convicted of unlawful assembly. As to nuisance, *Gibson*, J., said (c) : “Processions may use the streets for passage on lawful occasions and for lawful objects, and provided the user is reasonable there is no nuisance. . . . Occasion, duration of the user, place and hour must be considered.” Where a procession was held for a successful parliamentary candidate, and some of the members of it broke windows on the route, but the candidate himself remonstrated with them, he was held not liable for the damage done (d). [1067]

Control of Routes.—By sect. 21 of the Town Police Clauses Act, 1847 (e), the Commission, now the highway authority, have power to make orders for the route to be observed by all carts, carriages, horses and persons, and for preventing obstruction in the streets in all times of processions, rejoicings or illuminations. Every wilful breach of such an order is to be deemed a separate offence, and a penalty is incurred up to 40s. By sect. 8 of the same Act (f), street extends to and includes any road, square, court, alley and thoroughfare or

(a) 29 Halsbury's Statutes 57—63.

(b) (1882), 9 Q. B. D. 308; 15 Digest 644, 6854.

(c) *Lewdens v. Keaveney*, (1908) 2 I. R. 82, at p. 90; 42 Digest 848, g.

(d) *Peacock v. Young* (1860), 21 L. T. 527; 43 Digest 887, 125.

(e) Town Police Clauses Act, 1847; 19 Halsbury's Statutes 36.

(f) *Ibid.*; 13 Halsbury's Statutes 601.

public passage. By sect. 52 of the Metropolitan Police Act, 1889 (g), the Commissioner of Police in the metropolitan police district may make regulations for the same control in the streets in that area. Under the London Traffic Act, 1924, also, the police have power by sect. 10 (h) to make regulations in the area covered by that Act prescribing the routes to be followed by all classes of traffic, of which a procession may be said to be one. [1068]

The Public Order Act, 1936.—By sect. 3 (1) of the Public Order Act, 1936 (i), a chief officer of police who has reason to apprehend, owing to the time or place at which, and the circumstances in which, any public procession is to take place and the route proposed to be taken by the procession, that it may occasion a serious public disorder, may give directions imposing conditions upon the persons organising or taking part in the procession. These conditions must be such as appear to him necessary for the preservation of public order, they may include the route to be taken by the procession, and may prohibit the procession from entering any public place specified in the directions. They may not, however, restrict the display of flags, banners or emblems unless they are reasonably necessary to prevent risk of a breach of the peace. Public procession is defined (k) as a procession in a public place, and public place means any highway, public park or garden, any sea-beach, and any public bridge, road, lane, footway, square, court, alley or passage, whether a thoroughfare or not; and includes any open space to which, for the time being, the public have or are permitted to have access, whether on payment or otherwise. By sect. 3 (2) of the same Act, if, for some particular circumstance existing in any borough or urban district, the chief officer of police outside the metropolitan police district considers the powers above mentioned will not be sufficient, he may apply to the council for an order prohibiting the holding of all public processions or of any class of public procession, for a specified period not exceeding three months. The council may make such an order with the consent of the Home Secretary, with any modifications as may be approved by him. In the London area, the Commissioner of the City of London Police or the Commissioner of the Metropolitan Police may himself make the order, with the consent of the Home Secretary. Any person who knowingly fails to comply with any directions given or conditions imposed, or organises or assists to organise a procession in contravention of such an order, or who incites any person to take part in such a procession, is guilty of an offence under the Act, and by sect. 7 (2) is liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding £50, or to both. By sect. 4, any person who has with him any offensive weapon, otherwise than in pursuance of lawful authority, on the occasion of a public procession, is guilty of an offence and subject to the same penalties. A constable without warrant may arrest such a person reasonably suspected by him. Acting in pursuance of lawful authority means acting in authority as a servant of the Crown or of either House of Parliament or of any local authority or as a member of a recognised corps or as a member of a fire brigade. [1069]

(g) 19 Halsbury's Statutes 118.

(h) See also Sched. 3 (1); 19 Halsbury's Statutes 183, 190.

(i) 29 Halsbury's Statutes 60.

(k) *Ibid.*, s. 9 (1).

Buildings, etc., on Route.—The question of the safety of buildings and stands on the route of a procession is dealt with in the title SAFETY PROVISIONS OF BUILDINGS AND STANDS. Negligence in the setting up of the stands would of course be followed by the usual consequences. In *McLoughlin v. Warrington Corporation* (*l*), damages were given against a local authority where a boy climbed to see a procession on a fountain belonging to them which was defective, and fell, in spite of the fact that they pleaded improper user on his part. In *Campbell v. Paddington Corporation* (*m*) a local authority erected a stand in the highway and so blocked the view from a house whose occupier had contracted to let seats in her window. It was held that she was entitled to recover as damages the profit she would have made on the contract. [1070]

London.—Under the Metropolitan Police Act, 1889 (*n*), the Commissioner of Police may make regulations for preventing obstruction in streets during processions, etc. This was extended to the City Commissioner of Police by sect. 24 of the Metropolitan Streets Act, 1867 (*o*). Sect. 54 (9) of the Act of 1889 provided a penalty for breach of the regulations. Sect. 8 (8) of the Public Order Act, 1936 (*p*), provides that in certain circumstances the Commissioner of the City of London Police or the Commissioner of Police of the Metropolis may, with the consent of the Secretary of State, make an order prohibiting, for such period not exceeding three months as may be specified in the order, the holding of all public processions or of any class of public processions so specified. [1071]

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- (*l*) (1910), 75 J. P. 57; 26 Digest 51, 218.
(*m*) (1910), 75 J. P. 277; 26 Digest 429, 1483.
(*n*) S. 52; 19 Halsbury's Statutes 118.
(*o*) *Ibid.*, 161.
(*p*) 29 Halsbury's Statutes 61.
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PROFESSIONAL AUDIT

See AUDIT.

PROFESSIONAL AUDITORS

See AUDITORS.

PROHIBITION, WRIT OF

	PAGE
NATURE OF THE WRIT -	419
CIRCUMSTANCES IN WHICH WRIT WILL LIE -	419
TIME AT WHICH WRIT WILL LIE -	421
WAIVER OF OBJECTION TO JURISDICTION -	421
<hr/>	
	PAGE
AGAINST WHAT TRIBUNALS THE WRIT LIES -	422
PROCEDURE AND COSTS -	424

See also titles :

ACTIONS BY AND AGAINST LOCAL AUTHORITIES ; CERTIORARI ;	MANDAMUS ; QUO WARRANTO.
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Nature of the Writ.—The writ of prohibition is a prerogative writ issuing out of the High Court of Justice, directed to an inferior court (*a*) and forbidding the continuation of proceedings in such court in excess of its jurisdiction or in contravention of the law. No proceeding at any time pending in the High Court or the Court of Appeal can be restrained by prohibition. Generally speaking the issue of the writ is of right and not discretionary. It is the policy of the law to keep inferior courts strictly within their proper sphere of jurisdiction (*b*), and the High Court will not refuse the writ merely because the applicant has no merits, or has delayed in making his application, or because the matter in dispute is of a trivial nature. At the same time, the hearing of an application for the writ is not to be regarded as in the nature merely of an appeal. [1072]

Circumstances in which the Writ will lie.—Prohibition lies for excess or absence of jurisdiction in the inferior court and also for a contravention of some statute or of the rules of common law. Thus it lies against the judge of, or other party called upon to decide the matter in, the inferior court where such judge or other party is himself interested in the subject-matter of the dispute, or is otherwise not in a position on account of personal bias to come to a right conclusion (*c*). It is also granted where the inferior judge alters or rescinds his judgment (*d*).

In most cases the question whether the inferior tribunal has or has not jurisdiction depends upon some preliminary question of law or of fact. Where the inferior tribunal has given itself jurisdiction by

(*a*) For the courts and tribunals to which the writ will go, including certain bodies exercising judicial or quasi-judicial functions but not ordinarily considered as "courts," see *post*, p. 422.

(*b*) See *Farquharson v. Morgan*, [1894] 1 Q. B. 552, at p. 560; 16 Digest 373, 2110.

(*c*) *Dimes v. Grand Junction Canal (Proprietors)* (1852), 3 H. L. Cas. 759; 16 Digest 382, 2196.

(*d*) *Re London Scottish Permanent Building Society* (1893), 63 L. J. (Q. B.) 112; 16 Digest 379, 2168.

coming to an erroneous decision upon a point of law (*e*) the writ will lie. But generally speaking if the jurisdiction is founded upon a preliminary decision on a point of fact, the High Court will not interfere even if the finding is against the weight of evidence. An inferior tribunal cannot give itself jurisdiction by deciding a preliminary question of fact without evidence : on the other hand, it cannot refuse to go into evidence in order to ascertain whether it has or has not jurisdiction ; and if it takes upon itself jurisdiction without evidence or after refusing to go into evidence, and it turns out that there was no jurisdiction, the High Court will interfere by prohibition (*f*). But when the inferior judge has gone into the inquiry and determined the question of fact, the High Court cannot look to see whether the decision was, on the balance of evidence, right. In applying this principle to cases in which the inferior tribunal is constituted by statute it is necessary to look at the terms of the statute to see whether Parliament intended to entrust the tribunal with the exclusive power of deciding the preliminary question of fact upon which the jurisdiction rests. Thus it has been said (*g*) that where the statute provides that jurisdiction shall be exercised only when a certain state of facts exists and is shewn to the tribunal to exist, it is not for the inferior tribunal conclusively to determine whether that state of facts exists ; if they exercise the jurisdiction in the absence of the enabling state of facts, it will be held that they have acted without jurisdiction. On the other hand Parliament may by the language of the statute creating the jurisdiction evince an intention that the inferior tribunal shall first determine whether a state of facts exists and then exercise a jurisdiction if it does exist. In such a case the superior court will not interfere on the ground that the tribunal has determined the preliminary question incorrectly.

[1078]

The existence of an alternative remedy by which the absence or excess of jurisdiction may be corrected does not preclude the High Court from granting the writ, at all events in cases where the want of jurisdiction complained of is based upon the breach of some fundamental principle of law (*h*).

The alternative remedy may, however, be provided by statute and the terms of the statute may expressly bar an application for the writ. Thus the Town and Country Planning Act, 1932 (*i*), the Housing Act, 1936 (*k*), and the L.G.A., 1933 (*l*), each provide a special remedy by way of appeal for the purpose of testing the validity of certain orders made by a local authority thereunder, and each of these Acts expressly provides that the validity of those orders shall not be called

(*e*) See *Elston v. Rose* (1868), L. R. 4 Q. B. 4; 13 Digest 469, 191, where a county court judge assumed jurisdiction to try an ejectment case as a result of an erroneous construction of the expression "the value of the tenements" in the County Courts Act, 1867, s. 11. See also *Liverpool Gas Co. v. Everton* (1871), L. R. 6 C. P. 414; 16 Digest 378, 2158.

(*f*) *Brown v. Cocking* (1868), L. R. 8 Q. B. 672; 16 Digest 381, 2192.

(*g*) See *R. v. Income Tax Special Purposes Comrs.* (1888), 21 Q. B. D. 313, at p. 319; 28 Digest 97, 580. *R. v. Bloomsbury Income Tax Comrs.*, [1915] 3 K. B. 768; 25 Digest 98, 588. The matter is often made quite clear in local government legislation by expressly giving the power to the local authority if they are of opinion that a certain state of facts exists ; see e.g. *Re Bowman, South Shields (Thames Street) Clearance Order, 1931*, [1932] 2 K. B. 621, at p. 634; Digest (Supp.).

(*h*) *R. v. North, ex parte Oakley*, [1927] 1 K. B. 491, at p. 506; Digest (Supp.).

(*i*) See Sched. I., Part II., para. 4; 25 Halsbury's Statutes 527.

(*k*) See Sched. II., para. 3; 29 Halsbury's Statutes 658.

(*l*) See s. 162 (2); 26 Halsbury's Statutes 396.

in question by the writ of prohibition. Again, the issue of the writ may be impliedly excluded by the terms in which the statutory alternative remedy is provided. Thus, the Workmen's Compensation Act, 1925, provides that appeals from proceedings in the county court under the Act shall be by way of appeal to the Court of Appeal. It has been held that the legislature intended this to be the only remedy for a person aggrieved by an act done in the course of such proceedings in excess of or without jurisdiction, and that the remedy by way of prohibition was accordingly impliedly excluded (m). [1074]

Time at which the Writ will Lie.—The writ of prohibition may be granted as soon as the inferior tribunal acts beyond its proper jurisdiction. If the lack of jurisdiction appears on the record of the inferior tribunal, application for the writ may be made immediately without raising the question of jurisdiction before the inferior tribunal. Thus where the Electricity Commissioners had formulated and published a scheme under the Electricity Supply Act, 1919, sect. 1 (which scheme was held to be *ultra vires*) and began to hold a local inquiry into the merits of the scheme so published, prohibition was issued to prevent them from considering the scheme further, notwithstanding that the scheme could not come into operation until it was confirmed by the Minister of Transport and approved by resolutions of both Houses of Parliament (n).

In cases where the incompetency of the inferior court appears on the record, prohibition lies at any time even after the court has proceeded to give judgment in the matter (o); and even if there has been delay or acquiescence on the part of the applicant. Where the lack of jurisdiction is not apparent, but depends upon some fact which the applicant has had an opportunity of raising in the court below, a different rule prevails. In such a case if the applicant has allowed the inferior tribunal to give judgment without setting up the objection to jurisdiction, the High Court will decline to interfere (p). Thus it has been said that it is unreasonable for a defendant in the lower court to conceal from that court a collateral matter affecting its jurisdiction, and then, after judgment and acquiescence in the jurisdiction of the inferior court, to seek a writ of prohibition (q). It seems, however, that the withholding of the writ in such cases is a matter for the discretion of the High Court and that the tendency is to allow the writ to issue if there is material upon which it can operate. So where the judgment of the inferior tribunal has been for a sum of money, and the judgment remains unexecuted, prohibition will generally lie even where the applicant knew at the time of the judgment of some fact which deprived the inferior tribunal of jurisdiction (r). [1075]

Waiver of Objection to Jurisdiction.—The general rule is that parties to litigation before an inferior tribunal cannot by consent extend the area of the tribunal's jurisdiction. Where the jurisdiction arises by statute, it may be held that the jurisdiction is limited in a particular

(m) *Turner v. Kingsbury Collieries, Ltd.*, [1921] 2 K. B. 160; 34 Digest 376, 3047.

(n) *R. v. Electricity Commrs.*, [1924] 1 K. B. 171, at p. 190; Digest (Supp.).

(o) *Farquharson v. Morgan*, [1894] 1 Q. B. 552; 16 Digest 119, 170.

(p) "Except perhaps upon an irresistible case, or an excuse for the delay such as disability, malpractice or matter newly come to the knowledge of the applicant"; *London Corp. v. Cox* (1867), L. R. 2 H. L. 239; 16 Digest 373, 2112.

(q) *Ibid.*

(r) *R. v. North, ex parte Oakey*, [1927] 1 K. B. 491, at p. 503; Digest (Supp.).

direction only if objection to the jurisdiction is duly taken at the proper time in the course of the proceedings before the inferior tribunal (*s*). The question, whether the limitation on the jurisdiction is absolute or contingent upon objection duly taken, appears to be a question of the proper construction of the statute creating the jurisdiction. [1076]

Against what Tribunals the Writ Lies.—Prohibition lies against all inferior tribunals, civil or criminal, temporal, ecclesiastical or military, whenever such tribunals are exercising a judicial or quasi-judicial function. The writ will not go to correct the decisions of a body which is acting in a purely administrative capacity. So it has been doubted whether prohibition will lie against the L.C.C. when they act as the body called upon to decide to which parish a disused churchyard belongs (*t*).

The writ has issued against the Mayor's and City of London Court (*u*), against county courts, quarter sessions (*a*), petty sessions (*b*), coroner's court (*c*), the Railway and Canal Commissioners (*d*), the Income Tax Commissioners (*e*), the Comptroller-General of Patents (*f*), the Tithe Commissioners (*g*), the Enclosure Commissioners (*h*), the Commissioners of Woods and Forests (*i*), the Light Railway Commissioners (*k*), the Electricity Commissioners (*l*), and the Vice-Chancellor's court at the universities (*m*).

It is clear that the writ lies against an arbitrator who is exercising a statutory jurisdiction. Thus it has gone against the Official Arbitrator under the Acquisition of Land (Assessment of Compensation) Act, 1919 (*n*), and against an arbitrator appointed under the Agricultural Holdings Act, 1923 (*o*). Probably the writ also lies against an arbitrator acting under a reference out of court (*p*); but the alternative remedies provided for the purpose of correcting error in such a case make it unlikely that the question will ever fall to be decided. [1077]

Where a body has conferred upon it by statute a discretion or a duty to come to a decision upon a question which may affect the legal rights of an individual, the court will generally hold that the body must

- (*s*) *Jones v. James* (1850), 19 L. J. (Q. B.) 257; 16 Digest 120, 185; *Moore v. Gamgee* (1890), 25 Q. B. D. 244; 18 Digest 551, 1079.
 (*t*) *R. v. L.C.C.*, [1893] 2 Q. B. 454; 33 Digest 106, 709.
(u) *London Corp. v. Cox* (1867), L.R. 2 H. L. 239; 34 Digest 531, 48.
(a) *Ex parte Eversion Overeers* (1871), L.R. 6 C. P. 245.
(b) *Re Briton Medical and General Life Association* (1888), 39 Ch. D. 61.
(c) *R. v. Hefford* (1860), 29 L. J. (Q. B.) 249; 16 Digest 287, 2285.
(d) *S.E. Rail. Co. v. Railway Commrs.* (1881), 6 Q. B. D. 586; 38 Digest 358, 618.
(e) *Kensington Income Tax Commrs. v. Aranayo*, [1916] 1 A. C. 215; 23 Digest 102, 622.
(f) *Re Hall* (1888), 21 Q. B. D. 137; 36 Digest 648, 1207; cf. *Re Wingate's Patent*, [1931] 2 Ch. 272; Digest (Supp.).
(g) *Re Appledore Tithe Commutation* (1845), 8 Q. B. 130.
(h) *Church v. Inclosure Commrs.* (1862), 11 C. B. (n. s.) 664; 11 Digest 73, 953.
(i) *Chabot v. Morpeth (Lord)* (1850), 15 Q. B. 446.
(k) *R. v. Board of Trade, R. v. Light Railway Comrs.*, [1915] 3 K. B. 530. The powers of the Commissioners are now vested in the Minister of Transport.
(l) *Vide note (n)*, ante, p. 421.
(m) *Re Oxford (Chancellor) and Taylor* (1841), 1 Q. B. 952; 16 Digest 394, 2374.
(n) *R. v. Webster, ex parte Marshall* (1931), 95 J. P. 226; Digest (Supp.).
(o) *R. v. Powell, ex parte Camden (Marquis of)*, [1923] 1 K. B. 641; Digest (Supp.).
(p) See the judgment of Lord HEWART, C.J., in *R. v. Webster, ex parte Marshall* (*supra*).

exercise its discretion in a judicial manner. In such cases the body is said to be clothed with quasi-judicial powers, or to be exercising quasi-judicial functions. The functions of Government departments and local authorities are *prima facie* of a purely administrative nature (except where Parliament has conferred a duty of manifestly judicial character), but in a number of cases the court has held, upon the proper construction of the Act by which a particular function in question is created, that the department or authority must act in a quasi-judicial fashion. In such cases, although the body cannot be described as a court in the sense that it is bound by rules of evidence and procedure, it is subject to correction by the writ of prohibition; unless, indeed, the remedy by way of an application for the writ is expressly (or impliedly) excluded by statute. Thus it has been held (*q*) that the writ will lie against the Minister of Health to prevent him from considering or approving of an improvement scheme under the Housing Act, 1925 (*r*), in a case in which the court held that what had been presented to the Minister for his approval could not be properly described as an improvement scheme within the meaning of the Act. Again, it has been held that the writ will lie against an assessment committee in a case where a rating authority had appointed as their representatives on the committee two persons who had previously been appointed by the authority members of a sub-committee empowered to value property for the purpose of preparing a valuation list (*s*). The writ has also gone against the Electricity Commissioners (*t*) in connection with the preparation of a scheme under the Electricity (Supply) Act, 1919, sect. 1 (*u*). It has been held that an interim development authority when giving a decision upon an application for leave to develop under the Town and Country Planning Act, 1932, is exercising quasi-judicial functions (*a*); and so is the Minister of Health in deciding whether to confirm a clearance order or a compulsory purchase order made under the Housing Act, 1936, when an objection has been made to the order (*b*). Again, when the L.C.C. in purported exercise of their powers under sect. 65 of the Housing Act, 1925 (*c*), resolved to appropriate (subject to the certificate of the Minister under sect. 103) for housing purposes certain land forming part of an open space, which was governed by a special Act, and the Minister of Health announced his intention of holding a local inquiry into the matter, it was held that, as the appropriation was *ultra vires*, prohibition would lie to prevent the Minister from proceeding to any

(*q*) *R. v. Minister of Health, ex parte Davis*, [1929] 1 K. B. 610; Digest (Supp.).

(*r*) 13 Halsbury's Statutes 1001.

(*s*) *R. v. Worcestershire Assessment Committee, ex parte Hadley*, [1929] 2 K. B. 397; Digest (Supp.).

(*t*) *R. v. Electricity Comrs.*, [1924] 1 K. B. 171; Digest (Supp.).

(*u*) 7 Halsbury's Statutes 754.

(*a*) *R. v. Hendon R.D.C., ex parte Chorley*, [1933] 2 K. B. 696; Digest (Supp.). A case in which *certiorari* was granted to quash a decision on the ground that councillors voting in favour of a resolution to grant permission to develop had such an interest in the matter as to disqualify them from voting on account of bias. It is suggested that prohibition would lie in an appropriate case.

(*b*) *Errington v. Minister of Health*, [1935] 1 K. B. 249; Digest (Supp.). But not when there is no objection (*Frost v. Minister of Health*, [1935] 1 K. B. 280; Digest (Supp.)). Prohibition is excluded by the provisions of the Act which substitutes a special statutory right of appeal.

(*c*) 13 Halsbury's Statutes 1039. See now the Housing Act, 1936, ss. 76, 148; 29 Halsbury's Statutes 622, 663.

decision as to whether or not he would grant his certificate (d). [1078]

Procedure and Costs.—In civil proceedings an application for prohibition may be made, *ex parte* or by summons, to a judge in chambers ; or, by motion, to a divisional court. In criminal proceedings the application must be made by motion to a divisional court. An appeal lies against the refusal of an application. But on such a refusal no fresh application can be made to another judge or court of co-ordinate jurisdiction.

It is provided by the County Courts Act, 1888 (e), that where prohibition is applied for against a judge of the county court, the judge must not be served with notice of the application, and may not, except in pursuance of an order of a judge of the High Court, appear or be heard upon the application, and will not be liable for costs except in pursuance of such an order. Subject to this special rule with regard to the judge of a county court the application for the writ may be made either against the tribunal which it is sought to prohibit or against the party to the proceedings before the tribunal who has benefited or would benefit by the act which is complained of. The practice is to make the application against both the tribunal and the party. It is, however, usually the party, and only very occasionally the tribunal, who appears and is heard on the application. [1079]

The application must be supported by an affidavit (f). Where the application is made *ex parte* the greatest care must be taken to state in the affidavit all material facts. If the court comes to the conclusion that a rule *nisi* has been obtained on the strength of an affidavit which is in any way misleading, the rule will be discharged without any consideration of the merits of the application (g).

The court has a discretion (h) as to whether the applicant for the writ should be ordered to plead. Pleadings will be ordered in a case which involves a difficult point of law (i) ; but generally the discretion is exercised the other way.

The superior court has a discretion to award costs to the successful party in proceedings on an application for the writ. The costs incurred in the inferior court cannot be dealt with by the superior court. [1080]

(d) *R. v. Minister of Health, ex parte Villiers*, [1936] 2 K. B. 29 ; [1936] 1 All E. R. 817 ; Digest (Supp.).

(e) 3 Halsbury's Statutes 826.

(f) The affidavit should be intituled merely in the court, and not in the matter of the cause. The practice of making applications, and of granting first a rule nisi calling upon the respondent to shew cause why the rule should not be made absolute, and of making the rule nisi absolute or discharging it, is similar to the practice in connection with application for a *mandamus* ; see title *MANDAMUS*.

(g) *R. v. Kensington Income Tax Comrs., ex parte de Polignac (Princess)*, [1917] 1 K. B. 486 ; 16 Digest 390, 2322.

(h) Except where the application is against a county court when no further proceedings are allowed ; see County Courts Act, 1888, s. 128 ; 3 Halsbury's Statutes 880.

(i) See e.g. *Stileman-Gibbard v. Wilkinson*, [1897] 1 Q. B. 749.

PROJECTIONS OVER HIGHWAYS

	PAGE	PAGE
INTRODUCTORY - - - - -	425	WIRES, ETC., IN CONNECTION WITH
PROJECTIONS GENERALLY - - - - -	425	WIRELESS INSTALLATIONS - - 426
OVERHANGING TREES, ETC.	426	CORNERS OF BUILDINGS - - 426
RAILS, BRAMS, ETC., OVER STREETS	426	LONDON - - - - - 426

See also titles :

BRIDGES OVER STREETS ;
HIGHWAY AUTHORITIES ;
HIGHWAY NUISANCES ;

HIGHWAYS, RIGHTS OF PRIVATE PERSONS AS TO ;
OBSTACLES ON HIGHWAYS ;
WIRELESS.

Introductory.—Provisions as to projections over highways are contained in sects. 69, 70 of the Towns Improvement Clauses Act, 1847, as incorporated by sect. 180 of the P.H.A., 1875, and in Part II. of the P.H.A., 1925 (*a*) ; by sect. 3 of that Act, an urban authority can adopt all or any of the sections contained in that Part. By sect. 4 and the Second Schedule, sect. 24 of Part II. cannot be adopted by a R.D.C., but can be applied to a rural district by order of the M. of H. (*b*).
[1081]

Projections Generally.—By sect. 24 of the Act of 1925 (unrepealed by the P.H.A., 1926 (*c*)), any projection which is erected or placed against or in front of any house or building, and, being insecurely fixed or of defective construction, or otherwise is a source of danger to people lawfully using a street in an urban district, is, for the purpose of sects. 69 and 70 of the Towns Improvement Clauses Act, 1847 (*d*), as incorporated with the P.H.A., 1875, to be deemed an obstruction to the safe and convenient passage along the street, and those sections, including the penal provisions, apply accordingly. Sect. 69 of the 1847 Act as incorporated provides that an urban authority (or rural authority, when the section is applied by the Minister) can give notice to the owner and/or occupier of any house or building to remove or alter any porch, shed, projecting window, step, cellar, cellar door or window, sign, window shutter, wall, gate, or fence which is an obstruction to the safe and convenient passage along the street. The occupier must, within fourteen days after service of notice, remove the obstruction, or alter it in the manner directed by the notice, under a penalty not exceeding 40s. The authority can, however, remove the obstruction and charge the expenses on the owner or occupier ; if the latter did not make or put up the obstruction or projection, he may deduct the expense of removing, etc., the same from rent payable to the owner. Sect. 70 provides for the removal of projections existing before the passing of the incorporating Act.

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- (*a*) 13 Halsbury's Statutes 1110.
 (*b*) P.H.A., 1925, s. 4 (2) ; 13 Halsbury's Statutes 1116.
 (*c*) 13 Halsbury's Statutes 1123.
 (*d*) *Ibid.*, 552—553.

For a Form of Notice to remove a projection, see the Encyclopædia of Forms and Precedents, 2nd ed., Vol. XII., p. 593. [1082]

Overhanging Trees, etc.—The authority can serve a notice on the owner of overhanging trees or on the occupier of the particular premises, requiring him, within fourteen days, to lop or cut trees, hedges or shrubs overhanging any street or footpath, and obstructing light from any public lamp, or endangering or obstructing the passage of vehicles or foot passengers, or obstructing the view of drivers of vehicles. On default by the person served with the notice, the local authority can carry out the work, providing that they do no unnecessary damage; the cost can be recovered summarily as a civil debt (e) from the person served (f). In respect of roads for which a county council is the highway authority, the county council can exercise this power. There are also powers for the same purposes in sects. 65, 66 of the Highway Act, 1855 (g). [1083]

Rails, Beams, etc., over Streets.—The consent of the local authority (in writing under the hand of the clerk) is necessary before overhead rails, beams, pipes, cables, wires, etc., can be placed across a street, the authority making such reasonable terms and conditions as they think fit. The better opinion is that a fee cannot be exacted for consent. The penalty for contravention is a fine not exceeding £5 and a daily penalty not exceeding 20s. (h). [1084]

Wires, etc., in Connection with Wireless Installations.—This matter may also be controlled by bye-laws made by a local authority under sect. 26 of the P.H.A., 1925 (i). See title WIRELESS. [1085]

Corners of Buildings.—Where the P.H.A. Amendment Act, 1907, sect. 22 (k), is in force, local authorities can require the corner of any building intended to be erected at the corner of two streets to be rounded off, etc., and must pay compensation for so doing. For other powers of local authorities in regard to street corners, see sect. 33 of the P.H.A., 1925 (l), and as to the powers of the Minister of Transport or a highway authority with regard to the obstruction of the view at corners, see sect. 4 of the Roads Improvement Act, 1925 (m).

For cases dealing with obstructions on highways generally, see the English and Empire Digest, Vol. XXVI., pp. 418—427. [1086]

London.—The Metropolitan Paving Act, 1817 (n), provides that the hanging out of any "meat or offal or other matter or thing whatsoever" from buildings over pavements, areas or other buildings or premises, and the placing of unsecured garden pots on any other matter or thing on the front of any building over any street or public place is prohibited on pain of a fine and forfeiture of the offending article. By virtue of the Metropolis Management Act, 1855 (o), metropolitan borough councils may, on fourteen days' notice, require owners and occupiers to remove

(e) See the Summary Jurisdiction Act, 1879, s. 35; 11 Halsbury's Statutes 342.

(f) P.H.A., 1925, s. 23; 13 Halsbury's Statutes 1123.

(g) 9 Halsbury's Statutes 81, 82.

(h) See P.H.A., 1925, s. 25; 13 Halsbury's Statutes 1123.

(i) 13 Halsbury's Statutes 1124.

(k) *Ibid.*, 919.

(l) *Ibid.*, 1128.

(m) 9 Halsbury's Statutes 221. See also 16 Halsbury (2nd ed.), 484.

(n) S. 65; 11 Halsbury's Statutes 855.

(o) S. 110; *ibid.*, 914.

or, if the council think fit, alter porches, sheds, projecting windows, lamps, signs, showboards and other projections from buildings placed or made against or in front of any building after the commencement of the Act, in cases where nuisance is caused through the projection or through its endangering or rendering less commodious the passage along any street. Failure to remove or alter involves a fine. By sect. 120 of the Act, borough councils may remove a projection made before the commencement of the Act on giving seven days' notice. The Metropolitan Police Act, 1839 (*p*), prohibits in the Metropolitan police district the exposing of things for sale over carriage- or foot-ways or the setting up of any pole, blind, line or other projection so as to cause nuisance or obstruction in any thoroughfare. The City of London Police Act, 1839 (*q*), contains similar provisions as regards the City. The London Building Act, 1930 (*r*), prohibits the unauthorised erection of obstructions and encroachments "in, upon, over or under" any street. The local authority (*i.e.* metropolitan borough council) may require removal and on failure may remove at the expense of the offender. The L.C.C. (General Powers) Act, 1924 (*s*), prohibits the suspending of flags, etc., over the public way for the purpose of advertisement, etc., without the consent of the borough council. (See also title HIGHWAY NUISANCES.) [1087]

(*p*) S. 60 (7); 19 Halsbury's Statutes 124.

(*q*) 2 & 3 Vict. c. xciv.

(*r*) S. 221; 23 Halsbury's Statutes 319.

(*s*) S. 54; 11 Halsbury's Statutes 1366.

PROMENADES

See ESPLANADES, PROMENADES AND BEACHES.

PROMOTION OF BILLS

See BILLS, PARLIAMENTARY AND PRIVATE.

PROPERTY

See CORPORATE LANDS; DISPOSAL AND UTILIZATION OF LAND;
GIFTS OF LAND AND OTHER PROPERTY.

PROPOSALS

See VALUATION LIST.

PROSTITUTION

See OFFENSIVE BEHAVIOUR.

PROVISIONAL APPORTIONMENT

See PRIVATE STREETS ; VALUATION LIST.

PROVISIONAL ORDERS

PAGE	PAGE		
MEANING OF PROVISIONAL ORDERS	428	ORDERS MADE BY THE MINISTER	
ORDERS MADE BY THE MINISTER OF		OF TRANSPORT	434
HEALTH	429	ORDERS MADE BY DEVELOPMENT	
ORDERS MADE BY THE SECRETARY		COMMISSIONERS	435
OF STATE	433	ORDERS MADE BY THE COMMI-	
ORDERS MADE BY THE BOARD OF		SIONER OF CROWN LANDS	435
TRADE	433	ORDERS MADE BY THE MINISTER	
ORDERS MADE BY THE BOARD OF		OF AGRICULTURE AND FISHERIES	436
EDUCATION	434		

See also titles :

BOROUGH FUNDS ACT ;
ORDERS ;
POWERS OF MINISTERS ;

PROMOTION OF BILLS ;
STATUTORY RULES AND ORDERS.

Meaning of Provisional Orders.—In certain general public Acts provision is made for obtaining powers by provisional orders, in order to save local authorities and statutory bodies the expense and trouble of proceeding by private Bill (a). The order is drafted by a Department of State but requires confirmation by an Act of Parliament to give it the force of law. In many modern statutes the order is made provisional only if objection is made to the proposal.

(a) See titles BOROUGH FUNDS ACT and PROMOTION OF BILLS.

It is pointed out in the Report of the Committee on Ministers' Powers (b) that a provisional order is not delegated legislation. In *In re Morley* (c) Sir G. JESSEL, M.R., said :

"The Legislature, instead of allowing proceedings to be taken before a Committee of either House, decided that these inquiries might be prosecuted more cheaply and more beneficially before a local tribunal, or persons appointed to inquire into the matter locally. These proceedings are instituted, and the parties, instead of applying to Parliament, apply to (a Department which) makes the provisional order, and then, if Parliament sees fit, that provisional order, generally with a great many more, is confirmed by an Act of Parliament, which is not procured at all by the applicant, but by (the Department)—that is, by the Executive Government of the country. The result is that . . . all that the applicant obtains is the provisional order, and there is no proceeding in Parliament with which he really has anything to do directly."

If, however, any opposition is raised, a Bill to confirm a provisional order can usually be referred to a Select Committee and the parties must then appear to promote or oppose, as in the case of an ordinary private Bill. Although the confirming Bill is brought in by the Government in the first instance, if opposition is raised the conduct of the proceedings in committee must be left to the promoters. [1088]

Instructions are issued annually, and may be obtained on application to the Minister of Health, as to the time and mode of making application for provisional orders and these contain the relevant standing orders of both Houses of Parliament in connection with the procedure for obtaining the confirmation and the necessary fees. Provisional Order Confirmation Acts are printed in the series of local Acts. As to costs, see sect. 1 of the House of Commons Costs Taxation Act, 1879 (d). [1089]

Orders made by the Minister of Health. General Procedure.—The procedure for making provisional orders by the Minister of Health, except as to the acquisition of land and the repeal and amendment of local Acts as described below, is contained in sect. 285 of the L.G.A., 1933 (e). Before the order is made notice of the purport of the application must be given by the applicants by advertisement in the *London Gazette* and in one or more local newspapers circulating in the area to which the provisional order will relate. The Minister then considers any objection to the application which may be made by persons affected by it, and must, unless he considers that for special reasons it is unnecessary, hold a local inquiry, of which notices must be given in any way he directs. At the inquiry all persons interested may attend and make objections (f). The Minister then submits the provisional order to Parliament for confirmation, and until confirmed it has no effect. If a petition against the order is presented while the Bill is pending in either House, the petitioner may appear before the Select Committee to which the Bill is referred and oppose it (g). [1090]

At any time before submitting a provisional order to Parliament the Minister may revoke the order, wholly or in part, and any Act confirming a provisional order may be repealed, altered or amended by another provisional order made by the Minister and confirmed by Parliament. This procedure is adopted by sect. 316 of the P.H.A.,

(b) (1932), Cmd. 4060, at p. 25. Price 2s. 6d.

(c) (1875), L. R. 20 Eq. 17; 43 Digest 340, 7.

(e) 26 Halsbury's Statutes 456.

(g) See title PROMOTION OF BILLS.

(d) 12 Halsbury's Statutes 507.

(f) See title INQUIRIES.

1936, after October 1, 1936, by giving the Minister himself power in certain cases to apply for the order, or to make it where there is no application.

Provisional orders made as to unrepealed sections of the P.H.A. must still be made under the procedure set out in sects. 297 and 298 of the P.H.A., 1875 (h). The chief difference between this and the procedure under the L.G.A. is that the notices are not to be given in the *London Gazette* but in a local newspaper for two successive weeks. [1091]

Alteration of Boundaries.—Where proposals are made to the Minister for the alteration of the boundaries of counties and county boroughs, by sect. 140 of the L.G.A., 1933 (i), the order is to be made under the above sect. 285 of the L.G.A., 1933, and it is to be provisional only and confirmed by Parliament, except in regard to the alteration of an area of local government partly situate in the county itself. By sub-sect. (4) of that section, when the Minister declines to entertain proposals involving the extension of the area of a county borough, the application for the provisional order is to be deemed to be a petition for leave to bring in a private Bill. [1092]

Compulsory Acquisition of Land.—The procedure is different in respect to the compulsory purchase of land (k) by local authorities under any enactment passed or statutory order made after the commencement of the L.G.A., 1933, empowering the Minister to authorise a local authority to purchase land compulsorily by means of a provisional order confirmed by Parliament, and is set out in sect. 160 of the L.G.A., 1933 (l).

A compulsory purchase order made under sect. 161 of the L.G.A., 1933, and confirmed by the Minister must by sect. 174 (m) be provisional until confirmed by Parliament where the land forms part of a common, open space or allotment unless an equivalent area is given in exchange. By sect. 306 of the P.H.A., 1936 (n), the purposes of that Act are purposes for which land may be acquired compulsorily under sect. 160 of the L.G.A., 1933. [1093]

United District for M.O.H.—Where the Minister makes an order for the union of districts for the appointment of a M.O.H. (o), he must do so by means of a provisional order by sect. 112 of the L.G.A., 1933 (p). [1094]

Review of County Districts.—An order made by the Minister effecting changes altering the boundaries of county districts under sect. 146 of the L.G.A., 1933 (q), is provisional only and must be confirmed by Parliament, if within four weeks of the making of the order objection to it is made by the council of a borough affected by the order and is not withdrawn. [1095]

Transfer of Powers of Public Bodies.—By sect. 270 of the L.G.A., 1933 (r), the Minister may, by provisional order, transfer to the council of a county or county borough any function conferred by or in pursuance of any enactment on any conservators or other public body not being

(h) 13 Halsbury's Statutes 749, 750.

(i) 26 Halsbury's Statutes 370. See title ALTERATION OF AREAS.

(k) See title COMPULSORY PURCHASE OF LAND, Vol. III., pp. 412, 414, 415.

(l) 26 Halsbury's Statutes 298.

(m) *Ibid.*, 401. See title COMMONS.

(n) 29 Halsbury's Statutes 517.

(o) See title MEDICAL OFFICES OF HEALTH.

(p) 26 Halsbury's Statutes 366.

(q) *Ibid.*, 384. See title COUNTY REVIEW, Vol. IV., p. 214.

(r) *Ibid.*, 450.

the council of a county district, in the county or county borough. The draft of the order must be approved by the conservators or other body affected, before it is finally made. [1096]

Repeal and Alteration of Local Acts.—By sect. 303 of the P.H.A., 1875 (s), the Minister may, on the application of the council of any local authority under the P.H.As., wholly or partially repeal, alter or amend any local Act which relates to the same subject-matter as that Act, other than one for the conservancy of prices, by provisional order, which is made under sect. 297 of that Act. By sect. 317 of the P.H.A., 1936 (t), the reference to the same subject-matter as that Act is to be construed as including a reference to any local Act which relates to the same subject-matter as the latter Act. [1097]

Port Health Authorities and Joint Boards.—By sect. 2 of the P.H.A., 1936 (u), which takes the place of sect. 287 of the P.H.A., 1875, the Minister may by order constitute a port health district under a port health authority (a) after giving notice to every riparian authority who will be liable to contribute under the order to the expenses of the authority. If, within twenty-eight days after the notice has been given, any one of them gives notice to the Minister that they object, and the objection is not withdrawn, the order is provisional only and must be confirmed by Parliament. By sect. 6 of the same Act, the Minister may, in the same way, constitute a united district under a joint board (b), but the notices must in this case be given to the local authority of every district which, or any part of which, is to be included. Sect. 314 of the P.H.A., 1936 (c), enables the Minister by order to substitute provisions of the new public health law for the corresponding repealed provisions in orders constituting joint boards as port health authorities, but if this is not made within two years after the commencement of the Act, i.e. by October 1, 1939, the order must be confirmed by Parliament. By sect. 293 (i) of the L.G.A., 1938 (d), the same procedure applies to unrepealed sections of the P.H.A., 1875 to 1932, the L.G.A., 1894, or the L.G.A., 1929. The Minister also collaborates in the formation of joint boards under the Electricity Supply Acts (e). [1098]

Housing.—Provisional orders under the Housing Act, 1936, are only to be made : (i.) for a joint issue of local bonds by two or more local authorities (f), and (ii.) where any order under the Act authorises the acquisition or appropriation to any other purpose of any land forming part of any common, open space or allotment (g). [1099]

Town and Country Planning.—The same provision as to acquisition of land forming part of a common, open space or allotment is included in Schedule III. to the Town and Country Planning Act, 1932, where land is acquired compulsorily under sect. 25 of that Act (h). [1100]

Water.—The Central Authority under the Gas and Water Works Facilities Acts, 1870 and 1878 (i), was established by statutory orders

(s) 18 Halsbury's Statutes 752.

(t) 29 Halsbury's Statutes 523.

(u) *Ibid.*, 323.

(a) See title PORT HEALTH AUTHORITIES.

(b) See also ss. 9, 293, and title JOINT BOARDS AND COMMITTEES, Vol. VII., p. 869.

(c) 29 Halsbury's Statutes 521.

(d) 28 Halsbury's Statutes 461. See also heading "River Pollution," *post*.

(e) See *post*, p. 484.

(f) Housing Act, 1936, s. 122; 29 Halsbury's Statutes 652.

(g) *Ibid.*, s. 143; see title COMMONS.

(h) 25 Halsbury's Statutes 502.

(i) 8 Halsbury's Statutes 1254, 1275.

under the M. of H. Act, 1919, as the Board of Trade for gas and the M. of H. for water (*k*). Details as to application for provisional orders under these Acts are contained in the paragraph on *Gas* below. By sects. 1 and 2 of the Water Undertakings (Modification of Charges) Act, 1921 (*l*), modification of the charges may be made by order of the Minister of Health on the application of the undertakers and, if objections are made, this is provisional only. [1101]

Smoke and Noxious Fumes.—By sect. 109 of the P.H.A., 1936 (*m*), the Minister may, by order, extend the saving in that Act in regard to mines and other kindred works to any other industrial process specified in the order, or exclude any of the processes specified in the section from the saving so far as smoke nuisance is concerned. Such an order is to be provisional only and must be confirmed by Parliament.

By sect. 8 of the Alkali, etc., Works Regulation Act, 1906 (*n*), the Minister may by order require the owners of any works in which aluminous deposits are heated for the purpose of making cement, or of any works in which sulphide ores, including regulus, are calcined or smelted to adopt the best practical means, if such can be adopted at reasonable expense, to prevent or limit the discharge from the furnaces and chimneys of noxious or offensive gases, and may extend to such works the provisions of the Act in regard to other scheduled works. Such an order is provisional only and must be confirmed by Parliament. [1102]

Brine Pumping.—Under the Brine Pumping (Compensation for Subsidence) Act, 1891 (*o*), any owner or owners of land in any county of a rateable value of not less than two thousand pounds or any sanitary authority may apply by memorial to the Minister of Health, where they allege subsidence of land due to brine pumping, praying that a compensation district may be formed. Such a district under sects. 6 and 7 of the Act must be formed by provisional order which must be confirmed by Parliament. [1103]

River Pollution.—The Minister of Health, by sect. 14 (3) of the L.G.A., 1888 (*p*), on the application of the council of any of the counties concerned, may by order constitute a joint committee or other body representing all the administrative counties by or through which a river, or any specified portion of it, or any of its tributaries passes, and may confer on such a body all the powers of a sanitary authority under the Rivers Pollution Prevention Act, 1876 (*q*), or such of them as may be contained in the order. By sect. 55 (2) of the Salmon and Freshwater Fisheries Act, 1928 (*r*), the Rivers Pollution Prevention Act may be extended to the sea and to tidal waters to a point to be determined by an order of the Minister of Health and, if objection is made, the order must be confirmed by Parliament. A provisional order under the above sect. 14 may be made, by sect. 56 of the Land Drainage Act, 1930 (*s*), by the Minister of his own motion and without any application by the council of any of the counties concerned, to constitute a joint committee or other body having any of the powers of a sanitary authority

(*k*) S.R. & O., 1920, Nos. 2125, 2126.

(*l*) 20 Halsbury's Statutes 289, 290.

(*m*) 29 Halsbury's Statutes 406.

(*n*) 18 Halsbury's Statutes 897.

(*o*) 12 Halsbury's Statutes 54—67.

(*p*) 10 Halsbury's Statutes 697. See also under heading "Port Health Authority and Joint Boards," *ante*.

(*q*) 20 Halsbury's Statutes 316. See title POLLUTION OF RIVERS.

(*r*) 8 Halsbury's Statutes 812.

(*s*) See also s. 73; 28 Halsbury's Statutes 509, 576.

under the Rivers Pollution Prevention Act, 1876, for a catchment area or combination of catchment areas. [1104]

Mental Deficiency.—Provisional orders under sects. 297 and 298 of the P.H.A., 1875, may be made by the Minister (*t*) under sect. 29 of the Mental Deficiency Act, 1913 (*u*), on the application of two or more local authorities, to form a joint committee or joint board for the exercise of powers under that Act. [1105]

Orders made by Secretary of State.—The H.O. is the department for making provisional orders in the following cases:

Explosives.—By sect. 103 of the Explosives Act, 1875 (*a*), the Home Secretary, on the application of any local authority, or of any persons making, keeping, importing, exporting or selling any explosive, may make an order for repealing, altering or amending all or any of the provisions of any local Act, charter or custom on the subject. This order is provisional and must be confirmed by Parliament. [1106]

Military Lands.—Sect. 2 of the Military Lands Act, 1892 (*b*), gives power to the Home Secretary in regard to the purchase of land for military purposes. In cases of compulsory purchase a provisional order is necessary which must be confirmed by Parliament. This Act was extended to the Royal Naval Volunteers Reserve by the Naval Lands (Volunteers) Act, 1908 (*c*), and for the purposes of civil aviation by the Air Navigation Act, 1920 (*d*). [1107]

Police Pensions.—Provisions of a local Act as to a fire brigade or fire police may be made or modified by the Home Secretary on the application of a local authority, in order to bring them into harmony with the Police Pensions Act, 1921 (*e*), by order, which must be confirmed by Parliament. [1108]

Validity of Marriage.—The Home Secretary may by order, under the Provisional Order (Marriages) Act, 1905 (*f*), remove invalidity or doubtful validity of marriages solemnised in England, and by Marriages Validity (Provisional Orders) Act, 1924 (*g*), relieve from liability ministers who may have solemnised the marriages to which the orders relate. Such an order is provisional and must be confirmed by Parliament. [1109]

Workmen's Compensation.—Under the Workmen's Compensation Act, 1925, by sect. 45 (*h*) thereof, the Secretary of State may by provisional order, which must be confirmed by Parliament, require all employers in an industry in which a mutual trade insurance company or society has been formed to insure in such a company or society on the application of any employees or workmen engaged in the industry. [1110]

Orders made by Board of Trade. *Gas.*—The Board of Trade, as mentioned on pp. 431—432, is the department for making provisional orders in regard to gas under the Gas and Water Works Facilities Acts, 1870 and 1873 (*i*). Provisional orders authorising any gas undertaking

(*t*) Transferred from Secretary of State by S.R. & O., 1920, No. 809.

(*u*) 11 Halsbury's Statutes 177.

(*a*) 8 Halsbury's Statutes 439.

(*b*) 17 Halsbury's Statutes 575.

(*c*) S. 1; *ibid.*, 600.

(*d*) S. 15; 19 Halsbury's Statutes 200.

(*e*) S. 32; 12 Halsbury's Statutes 888.

(*f*) 9 Halsbury's Statutes 362.

(*g*) *Ibid.*, 372.

(*h*) 11 Halsbury's Statutes 584.

(*i*) 8 Halsbury's Statutes 1254. See title GAS.

may be obtained under sect. 4 of the Act of 1870 (*k*) by any company or person. Sect. 12 of the Gas and Water Works Facilities Act, 1870, Amendment Act, 1873 (*l*), gives power to the Board of Trade to revoke, amend, extend or vary a provisional order made under the Act of 1870 by a further provisional order. This is to be made in the same way as the former and confirmed in the same manner by Parliament. Sect. 10 of the Gas Regulation Act, 1920 (*m*), replaced the whole proceedings, but sect. 12 was not repealed. Anything which could be done under the Acts of 1870 and 1873 by provisional order can now be done by the Act of 1920 by a special order made by the Board of Trade. [111]

Orders made by the Board of Education. *Compulsory Acquisition of Land.*—By sect. 111 of the Education Act, 1921 (*n*), a local education authority may be authorised to purchase land compulsorily by means of an order confirmed by the Board of Education, according to procedure set out in the Fifth Schedule of the Act (*o*). By Part VII. of the Schedule where the land proposed to be acquired is the site of an ancient monument or other object of archaeological interest or is the property of any local authority or has been occupied by any company or corporation for the purposes of a railway, dock, canal, water or other public undertaking, or at the date of the order forms part of any park, garden or pleasure ground or is otherwise required for the amenity or convenience of any dwelling home, the order is to be provisional only and must be confirmed by Parliament. [112]

Orders made by Minister of Transport. *Electricity.*—Provisional orders as to the promotion of electricity undertakings are now made by the Minister of Transport (*p*), though formerly by the Board of Trade. Anything done by provisional order may, under sect. 26 of the Electricity (Supply) Act, 1919 (*q*), be done by special order, as in the case of gas undertakings, which is to be made by the Electricity Commissioners and confirmed by the Minister. Provisional orders are made under sect. 4 of the Electric Lighting Act, 1882 (*r*), and by sect. 1 of the Electric Lighting Act, 1888 (*s*), consent must be given by the local authority of the area in which the undertakers who apply for the order are situated. By sect. 8 of the Electric Lighting Act, 1909 (*t*), the Minister may, with the concurrence of the Minister of Health, make provisional orders for a joint committee or joint board for the joint exercise of powers under the Electricity Acts. [113]

Light Railways.—By the Light Railways Act, 1896, an order has to be made authorising the establishment of a light railway. By the Railways Act, 1921 (*u*), these are to be made by the Minister of Transport, but in certain cases he may order that the proposals are to be submitted to Parliament. By sect. 9 (3) of the Act of 1896 (*a*) these reasons are the magnitude of the proposed undertaking, the effect

(*k*) See also s. 5, and Sched. B., Part IV. (*ibid.*, 1256—1262).

(*l*) 8 Halsbury's Statutes 1275.

(*m*) *Ibid.*, 1287.

(*n*) 7 Halsbury's Statutes 190.

(*o*) *Ibid.*, 223.

(*p*) S.R. & O., 1920, No. 59. See title ELECTRICITY SUPPLY, Vol. V., p. 274.

(*q*) 7 Halsbury's Statutes 772. As to procedure, see s. 35; *ibid.*, 775. See also as to new selected stations, s. 6 (2) of the Electricity (Supply) Act, 1920; *ibid.*, 797.

(*r*) 7 Halsbury's Statutes 688.

(*s*) *Ibid.*, 702.

(*t*) *Ibid.*, 740.

(*u*) S. 68; 14 Halsbury's Statutes 362. See title LIGHT RAILWAYS, Vol. VIII., p. 80.

(*a*) 14 Halsbury's Statutes 255.

thereof on the undertakings of any railway company existing at the time or any other special reasons. [1114]

Railways and Canals.—The Minister of Transport is also the authority for provisional orders in regard to traffic rates on canals and railways (b). [1115]

Harbours.—The Minister of Transport is also the authority for making provisional orders in respect of harbours (c). Persons desirous of obtaining authority to construct any works under the General Pier and Harbour Act, 1861 (d), must make applications by memorial, except in cases where any proposed work exceeds the sum of one hundred thousand pounds. By sect. 10 (e) the consent of the Commissioner of Crown lands must be obtained. The order must be confirmed by Parliament (f); and, where a petition is presented to either House in the progress through Parliament of the confirming Bill, it may be referred to a select committee, and the petitioner may be allowed to appear and oppose as in the case of a private Bill. For Fishery Harbours, see under "Minister of Agriculture and Fisheries," *post*. [1116]

Tramways.—Provisional orders authorising the construction of tramways may be obtained from the Minister of Transport (g) under sects. 4 to 21 of the Tramways Act, 1870 (h). The order must be confirmed by Parliament by sect. 14.

The Minister of Transport must also give his consent to orders made to vary navigation rights (i). [1117]

Orders made by Development Commissioners. *Acquisition of Land.*

—Under the Development and Road Improvement Funds Act, 1909, Development Commissioners were constituted whose duty it is, *inter alia*, to acquire land. This they are to do by order (k), which by sect. 19 (l) must be confirmed by Parliament where it authorises the acquisition of any land forming part of any common, open space or allotment, unless it provides for the giving of an area in exchange, not less in area and equally advantageous as certified by the Minister of Agriculture and Fisheries. This does not apply, however, to the acquisition of any common land for the construction of a new road or the improvement of an existing road within a rural district. [1118]

Orders made by Commissioner of Crown Lands. *Preservation of Ancient Monuments.*—The Commissioner of Crown Lands, as well as giving consent to provisional orders to harbours (m), may also make an order, called a Preservation Order, placing ancient monuments under his protection, under sect. 6 of the Ancient Monuments Consolidation and Amendment Act, 1918 (n). [1119]

(b) Railway and Canal Traffic Act, 1888, s. 24, as amended by the Railway and Canal Traffic (Provisional Orders) Amendment Act, 1891; 14 Halsbury's Statutes 229, 249.

(c) S.R. & O., 1919, No. 1440.

(d) S. 3; 18 Halsbury's Statutes 101. See title HARBOURS, Vol. VI., p. 289.

(e) 18 Halsbury's Statutes 102.

(f) *Ibid.*, s. 16.

(g) S.R. & O., 1919, No. 1440.

(h) 20 Halsbury's Statutes 7—14. As to procedure, see Sched. B; *ibid.*, 33. See title TRAMWAYS.

(i) *Post*, p. 436.

(k) S. 5; 9 Halsbury's Statutes 211.

(l) *Ibid.*, 216. See title COMMONS, Vol. III., p. 305.

(m) See *supra*.

(n) 12 Halsbury's Statutes 395. See also Ancient Monuments Act, 1931, s. 4; 24 Halsbury's Statutes 290, and title ANCIENT MONUMENTS AND BUILDINGS, Vol. I., p. 287.

Orders made by the Minister of Agriculture and Fisheries. *Fishery Harbours.*—By sect. 2 of the Fishery Harbours Act, 1915 (o), the Minister of Agriculture and Fisheries is the authority for making provisional orders under the General Pier and Harbour Act, 1861 (p), in regard to small harbours used principally by the fishing industry. The consent of the Minister of Transport must be given to the order (q). [1120]

Freshwater Fisheries.—By sect. 37 of the Salmon and Freshwater Fisheries Act, 1923 (r), the Minister of Agriculture and Fisheries may make an order for the regulation of any salmon, trout or freshwater fisheries within the area defined by the order. A fishery board may also by sect. 16 of the same Act (s) submit an order to the Minister for confirmation by him for the purchase of dams, weirs and other obstructions to fisheries, but when by sub-sect. (5) the order relates to a dam constructed under any Act of Parliament, this is provisional only until confirmed by Parliament. [1121]

Land Drainage.—The Minister may make orders under the Land Drainage Act, 1930, which, if opposed, are provisional only and must be confirmed by Parliament. Such are (i.) under sect. 2 (t) to add to or regroup catchment areas, (ii.) by sect. 8 (u) to confirm a scheme of a catchment board for amending or revoking provisions of public or local Acts affecting land drainage in their area, (iii.) by sect. 11 (a) to transfer to a catchment board the functions of an internal drainage board in their area, and (iv.) after consultation with the Minister of Transport, to vary navigation Acts by sect. 41 (b). The procedure is set out in Part II. of the Second Schedule to the Act (e). By sects. 14 and 15 (d) the order may contain provisions as to the payment of the expenses incurred and give power to catchment boards to apply for or oppose applications for provisional orders. [1122]

Agricultural Land Utilisation.—The Minister may, by sect. 10 of the Agricultural Land (Utilisation) Act, 1931 (e), by order acquire land compulsorily for small holdings and allotments. Where objection is made this must be confirmed by Parliament under procedure contained in Part II. of the First Schedule of the Act (f). By sect. 3 thereof no land must be acquired which is the property of any local authority, or has been acquired for the purposes of a railway, dock, canal, water or other public undertaking, or which is, or forms part of, any common or any town or village green, or any area dedicated or appropriated as a public park, garden or pleasure ground, or used for the purposes of public recreation or which forms part of the property of the National Trust. [1123]

Livestock.—See Livestock Industry Act, 1937, sects. 15, 58 and Sched. III.

(o) 18 Halsbury's Statutes 582.

(p) *Ante*, p. 435.

(q) Powers transferred from the Board of Trade by S.R. & O., 1919, No. 1440.

(r) 8 Halsbury's Statutes 801. See title FRESHWATER FISHERIES, Vol. VI., p. 140.

(s) 8 Halsbury's Statutes 787.

(t) 23 Halsbury's Statutes 530. See title LAND DRAINAGE, Vol. VIII., p. 11.

(u) *Ibid.*, 586.

(a) *Ibid.*, 539.

(b) *Ibid.*, 559.

(c) *Ibid.*, 587.

(d) *Ibid.*, 540.

(e) 24 Halsbury's Statutes 57. See titles ALLOTMENTS, SMALL HOLDINGS.

(f) *Ibid.*, 67.

PUBLIC ADMINISTRATION, INSTITUTE OF

The Institute of Public Administration was formed in 1922 by a group of civil servants and local government officers, under the presidency of the late Viscount Haldane of Cloan. The objects of the Institute are (a) the development of the civil service and other public services (both national and local) as a recognised profession, and (b) the promotion of the study of public administration.

In pursuance of these objects the Institute endeavours to maintain the high ideals and traditions of the public services. It promotes the study of (a) the vocational or professional practice of public administration; (b) the machinery necessary for the efficient day-by-day practice of public administration; and (c) historical, economic and political science with special reference to public administration and constitutional law and practice. The Institute provides for the exchange of information and thought on administrative and related questions with a view to the increased efficiency of the public services, and to the creation of a well-informed public opinion concerning those services. It affords opportunities for the acquisition and dissemination of useful information concerning the public services of this and other countries, and strives to develop the technique of administration.

[1124]

The Institute has promoted good relations between the members of different branches of the public services. Before the formation of the Institute, the local government services tended to be in watertight compartments, and officers rarely came into contact with colleagues other than those in similar departments elsewhere, while their contact with members of the civil service was mainly limited to formal interviews. The wider and deeper acquaintance with officers of different departments and of other countries, coupled with the discussion of what are now found to be common administrative problems, has increased the efficiency of both local and central government in this country.

Another result of the activities of the Institute has been the increased interest shown in the study of public administration by the universities. The founders of the Institute had in view the possibility of holding examinations in administrative law and science and cognate subjects leading to the issue by the Institute of a diploma in public administration. The University of London and certain provincial universities, however, instituted courses of study in these subjects and now grant diplomas and degrees in administration. The university authorities (particularly professors and lecturers dealing with administrative subjects) keep in close touch with the Institute and substantial mutual advantages arise from this contact. [1125]

The executive work of the Institute is carried on by a council which meets in London and by regional groups with headquarters in Belfast, Birmingham, Bristol, Edinburgh, Glasgow, Hull, Leeds, Liverpool, Manchester, Newcastle-on-Tyne and Sheffield. Overseas groups exist in New South Wales, South Africa, South Australia, Victoria, and Southern Rhodesia.

The council consists of a president, vice-presidents, the chairmen of regional groups, an honorary secretary and an honorary treasurer and not more than forty persons, being fellows, members or associates elected or co-opted in accordance with the constitution of the Institute. The rules of election and co-optation of members of the council are so formed as to obtain approximately equal representation of the local government and the national services as well as a number (not exceeding ten) of persons who have contributed work of value to the study and practice of public administration. In this way the aid of university representatives is secured.

Each regional group usually appoints a group council in addition to a chairman, secretary and treasurer. A proportion of the annual subscriptions received in the area of each group is allocated by the council to the group for regional expenses. The groups formulate their own programmes and their activities are an important branch of the work of the Institute. [1126]

The Institute's activities consist of three annual conferences, viz. a summer conference generally held at either Oxford or Cambridge, but sometimes in Scotland, a winter conference held in London, and a northern winter conference held in a convenient northern centre selected annually. The subjects dealt with at the conferences cover all aspects of public administration such as recruitment and training of officers, public relations, devolution and delegation, the sphere of the expert, financial control, co-ordination of departments, Whitley Councils and other topics.

In addition to the conferences, meetings (usually monthly) are held both in London and in the areas of the groups, at which lectures are given, often by eminent public officers, on various topics related to administration. [1127]

Membership of the Institute is of three classes : fellows, members and associates. The qualification of a fellow is that he (a) is engaged, or was formerly engaged, in the public service and has either obtained a university degree in public administration or a university diploma in that subject, or written an approved thesis on some matter appertaining to public administration ; or (b) has reached an approved status in the public services ; or (c) was formerly engaged in the public service and whilst so engaged had reached an approved status therein. The council of the Institute may also elect as an honorary fellow any person who has rendered eminent service in public administration or in relation thereto. [1128]

A person may be elected as a member who (a) is an associate of the Institute and has passed an approved examination, or (b) being a person engaged, or formerly engaged, in the public services is qualified to be an associate and has passed an approved examination, or (c) is engaged in the teaching of public administration, or (d) has reached an approved status in the public services, or (e) was formerly engaged in the public services and whilst so engaged had reached an approved status therein. The council may elect as an external member of the Institute any person not engaged in the public services who in the council's opinion is actively interested or concerned in the practice or study of public administration, but no person may be so elected from within the area of a regional group except upon the recommendation of the council of that regional group. An external member has no voting powers. [1129]

An associate must (a) have reached the age of eighteen years and be

engaged in the public services, or (b) with a view to entering the public services be either under articles of apprenticeship or engaged in an approved course of study. [1130]

Problems of administration in local government involve the allocation of functions to different local authorities, the distribution of business among the committees of the local council and also the allocation of duties among the chief officers, as well as methods of subsidiary departmental organisation. Consideration has been given from a purely academic point of view to the strong and weak points of local government methods in this country. Papers have been presented, and contributions to discussions made, by distinguished administrators from the United States and from the Dominions and various European countries. The fact that local government in this country is admired by observers from other countries has tended to lead to the conclusion that our methods are superior to those adopted elsewhere, but the close study of the problems by students elsewhere has not enabled them to recommend any slavish copying of our system. A striking example of departure from English methods is seen abroad in the city manager system in the United States, while in our own country there is a tendency for *ad hoc* bodies to be formed for certain special purposes, of which examples are electricity, transport and land drainage. The reconciliation of scientific local administration with the spirit of democracy is a problem which it may take a long time to solve. The intimate contact of the elected representatives with the public makes impossible the purely official form of local government. At the same time, the complexity of local government renders it more difficult, day by day, for the elected representative to have that complete grasp of affairs which his position would seem to demand. Local councils tend, if anything, to become larger and delegation to committees, if carried out on any extensive scale, deprives the larger body of most of the opportunity to express considered opinions even on broad questions of policy, owing to the lack of knowledge of details known only to the members of committees. This tendency, again, tends to break up the elected body into a number of separate nominated bodies (*i.e.* the committees) which are liable to become "watertight" and to resent criticism by the parent body. The committee system, indeed, while it has become a fixed feature of local government in this country, arouses criticism not only because it tends to the formation of bodies within a body but also because, as a corollary, it causes the setting up of separate official organisations with functions which overlap. The possible ultimate breakdown of the whole system is avoided only by the fact that the clerk to the council is in the position of co-ordinating officer and can prevent the complete isolation of the actions and decisions of the separate committees. He advises when actions touch upon the province of other committees and reports to committees matters affecting the council as a whole, and those committees in particular. The financial officer, also, acts as a co-ordinating officer in matters of finance and the extent of the success of the committee system often depends on the ability of the finance committee to advise the council on adequate methods of financial control. [1131]

The relations between the central government departments and local authorities, both financial and inspectorial, present another series of problems in which local democracy and central "bureaucracy" appear to clash.

A minor aspect of local administration (but one of outstanding

importance to those engaged therein) is seen in the problems of the recruitment, training and control of staff, allocation of duties of staff, promotion and similar matters. The Institute has been prominent in focussing discussion on all these questions and has indicated, mainly by comparative study of the civil service, the lines on which improvements may be made in dealing with them.

It is in the approach to these common problems that the distinction between the Institute and other "vocational" institutions is seen. Nearly every local government officer of administrative rank belongs to one or more of the professional societies but, generally speaking, finds that administrative problems (if they are treated at all by such societies) are treated somewhat narrowly and that the broader treatment and outlook of the Institute is necessary. The Institute is, to a certain degree, an association formed to advance the science and art of administration and to that extent is similar to the other professional societies although, of course, it does not compete with them in their particular branches of work. To at least an equal degree, however, the Institute is a "learned" society and thus encourages recruitment within its rank of all classes of officers who are interested in the more abstract study of administrative problems. It is thus possible for local government officers to adhere with equal loyalty to their own professional society and to the Institute of Public Administration with benefit to both bodies, bringing the specialised knowledge of the professional society to the broader problems considered by the Institute and applying the administrative principles emerging from the discussions of the Institute to the particular problems of the professional society. The main point is that there are problems of administration to which every member and officer of local authorities must direct his attention and it is through such an organisation as the Institute of Public Administration that he may best make his contribution to the solution of such problems. [1132]

The Institute publishes a quarterly journal, *Public Administration*, which records the latest developments in administrative methods and theory both at home and abroad—particularly, perhaps, in the United States of America. It has secured wide recognition as the standard publication on matters connected with public administration.

The Institute maintains contact with similar bodies abroad as well as with all organisations dealing with local government in this country. The activities of the Institute include research, towards the expenses of which a substantial grant was made by the Spelman Fund of New York. Several publications have been issued under the auspices of the Institute with the assistance of the Spelman Fund.

The offices of the Institute are: Palace Chambers, Bridge Street, Westminster, London, S.W.1. [1133]

PUBLIC ANALYST

See ANALYST.

INDEX

OFFICIAL BUILDINGS, 1—6

- Board of Guardians, use of former offices of, 3—4
- county buildings, use of for county council business, and for administration of [justice or police purposes, 4—5
- judicial buildings, provision of, 5
 - courts, assize, 5
 - coroner's, 5
 - county, 5
 - patty and quartier sessions, 5
- local authorities, power to acquire land for purposes of, 2
 - provision by, borrowing for purposes of, 2
 - furnishing, etc., 2

L.G.A., 1933, repeals under, 1

- as to powers of county councils, 1
 - district councils, 2
 - municipal corporations, 1
 - parish councils, 1

Parochial Offices Act, 1861...

Part V, Administrative County of London not affected by, 1

Vestries Act, 1850...

- London, City of, Central Criminal Court, 6
 - county buildings, statutory provisions as to, 5
 - coroners' courts, 6
 - metropolitan borough councils, town halls of, 6
 - police courts, etc., 6

parish councils and meetings, provision by—

- acquisition of land for purposes of, 2—3
- borrowing for, 3
- powers to combine for purposes of, 2
- use of school or other rooms by, 3
 - expenses, damage to, etc., 3
 - reasonable and suitable, questions of, 3

preliminary note, 1—2

- public offices, use of by approved societies, insurance committees, trade unions [and other bodies, 4
- regulations as to, 4
- for concerts, etc., 4

OLD AGE PENSION COMMITTEES, 7—12

- central authority, 7
- chairman, appointment and powers of, 8
- clerk to, register to be kept by, 11
 - remuneration of, 11
 - travelling expenses, as to, 11
- constitution of, 7—8
- decisions of, appeals against, 9—10
 - finality of, 9
 - notice of, 10
 - procedure on, 10

- local, appointment of, 7
 - functions of, 8—10
 - sub-committees, 7

London, in, 12

- meetings of, hire of room for, 10
- members, appointment of, 8

number of, 7—8

OLD AGE PENSION COMMITTEES—*continued.*

members, resignation or removal of, 8
tenure of office, 8
officers, 10—11
offices of local authority, use of, 10
old age pension, claim for, appointment of person to act on behalf of claimant, [12]

evidence on, 12

procedure on, 9—10

provisional allowance of, 10

disqualification for, 9

imprisonment, 9

Inebriates Act, 1898, detention order under, 9

poor law institution, inmate of, 9

unsound mind, maintenance as rate-aided person of, 9

statutory conditions for receiving, 9

Old Age Pensions Consolidated Regulations, 1922, provisions of, 7—8, 12

pension officer, 9, 11

report of, 9

quorum, 8

statutory authority for, 7

sub-committees, 7—8

OMNIBUSES. *See* titles HACKNEY CARRIAGES; OMNIBUSES OF LOCAL AUTHORITIES.**OMNIBUSES OF LOCAL AUTHORITIES, 13—28**

accounts, method of keeping, 27

employment, wages and conditions of, 25

fares, 23—26

increase of, application for, 26

minimum and maximum, 26

insurance, exemption from, 27

introductory note, 13—14

joint board, constitution and activities of, 23

committees, procedure by, 22

local authority, consent to operate outside district of, procedure to obtain, 17

joint boards and committees of, 22—23

powers of—

borrowing, repayment, as to, 24

statutory authority for, 23—24

prior to 1930...14—15

"Omnibus Bill, 1926," provisions of, 14—15

Royal Commission, 1925, reports by, 15

to enter into working and other agreements, 17—18

provide necessary vehicles, equipment and land, 23

"provide," manufacture not included in term, 23

run public service vehicles, 16—17

consents to be obtained, 16—17

exceptions to, 16

on premises belonging to railway, as to, 16—17

roads vested in statutory authority, as to, 16—17

transport services of, protection for, 19—22

"Leicester Corporation" case, report of Minister of Transport in, 19—20

protective clause, example of, 20

fares, by means of, 21

receipts, apportionment on ticket basis of, agreement for, [form of, 21—22

profits, application of, 26

Road Traffic Act, 1930, general position under, 15—16

services, co-ordinated agreements for, 19

inter-operation of, 18—19

statistical returns, 27

statistics to be supplied to Traffic Commissioners, 27

stopping places, etc., 27—28

points, 27

stands, 28

wear and tear allowance for income tax purposes, 26

INDEX

OPEN-AIR BATHS. *See title BATHS AND WASHHOUSES.*

OPEN AIR SCHOOLS, 29-30

children, selection of, 29-30

diet, 30

London, in, 30

open air education, development of, 29

provision of, 29

rest period, 30

value of, 30

OPEN SPACES, 31-43

acquisition by local authorities, 35

profitable interest or right, compensation for, 33
under Housing Act, 1936...36

Town and Country Planning Act, 1932...36

amenities, preservation of, 36-37

by-laws, administration by means of, 36

powers of local authorities to make, 36
Commons and Footpaths Society, formation of, 32
membership, 32

commons, rights of recreation over, 31

expenditure on, 32-33

Inclosure Act, 1845, provisions of, 32

inclosure award, effect of, 31-32

introductory note, 31-34

London in, acquisition and maintenance, powers of, 41

Metropolis Management Acts, under, 41

entertainments, outdoor performances, dancing, etc., 42

games and sports, facilities for, provision of, 42

land outside the county, as to, 42

Open Spaces Act, 1906, local authorities for, 41

ownership of, 41

private squares and gardens, 43

London Squares Preservation Act, 1931, provision of, 43

public, restriction of rights of, 43

management and maintenance of, 32-33

National Forest Park Committee, activities of, 40

national parks, establishment of, report of committee on, 40

National Trust, constitution and objects of, 38-39

In re Verrell, decision in, 38

property and maintenance of, 38

saving for under Land Settlement (Facilities) Act,

[1919...39]

no general statistics of, 32

"open space," definition of, 31

Open Spaces Act, 1906, provisions of, 34-35

private, 39-40

protection of, 40

reservation of, object of, 39

user, as to, 39

Public Open Space, model clause defining, 33-34

Recreation Grounds Act, 1850, provisions of, 33

savings for under Development and Road Improvement Funds Act, 1900, s. 19,

[37]

Housing Act, 1936, s. 143...37

L.G.A., 1933, s. 174...37

Town and Country Planning Act, 1932, Sched. III., Part

[IV. (1)...37]

traffic, protection from, Road Traffic Act, 1930, s. 14, provisions of, 38

transfer of, 34, 35

trustees of, powers of, 34

OPHTHALMIA NEONATORUM. *See title INFECTIOUS DISEASES.*

OPPOSITION TO BILL. *See title BILLS, PARLIAMENTARY AND PRIVATE.*

ORCHARDS. *See title DERATING.*

ORCHESTRA, MUNICIPAL. See title ENTERTAINMENTS, PROVISION OF.

- ORDERS, 43—68
 central authority, of, 45—59
 control by, methods of, 45
 nature of, examples of, 46
 departmental regulations, 48
 effect of, 48
 "general order," application of term, 49
 in Council, legislative nature of, 48
 Lord Sankey's committee, report of, 45
 methods of an inferior authority to obtain, 40—50
 application by petition, etc., 50
 joint representation, 50
 submissions for confirmatory order, 50
 power to make, 47—48
 amendment, revocation or varying of, 48
 consultations, etc., prior to making, 48
 "laying" before Parliament, 47
 order conflicting with Act, as to, 47
 publication, as to, 48
 rules and regulations, statutory, 47
 Yaffe Case, decision in, 47, 49
 provisional, 48
 roads and road traffic, 55—56
 special, 48—49
 Statutory Rules and Orders, 48
 under Housing Act, 1936...51
 L.G.A., 1929...52—53
 1933...53—54
 Public Health Acts, 57—59
 (Smoke Abatement), 57
 Rivers Pollution Prevention Act, 1876...57
 Town and Country Planning Act, 1932...36
 introductory note, 45
 local authorities, of, 60—68
 appeals against, 60
 complaint of default, inquiry on, 64
 consent of government department to, 60
 control, methods of, 61—62
 administrative orders, as to, 61—62
 approval and confirmation by Minister, 61
 consultation with outside bodies, 61
 courts, by, 61
 draft, publication of, 61
 different types of—
 orders of county council affecting other local authorities, 62
 local authority (as responsible authority) in connection with
 [schemes, 63
 under Infectious Diseases (Prevention) Act, 1890...62
 Public Health Acts, 1875, 1890...62
 examples of, 60
 intention to make, notice of, 60
 methods of lesser authority to obtain, 63—64
 proposals, submission of, 63
 private persons to obtain, 64
 under P.H.A., 1925, s. 32...64
 Ribbon Development Act, 1935, ss. 1—2...64
 Town and Country Planning Act, 1932...64
 power to make, limitations of, 60
 not an absolute power, 60
 statutory authority for, 60
 subject matters, list of, 64—68
 acquisition of land, 65
 housing, 65—66
 local government, 66
 rights of way, 66
 roads and road traffic, 66—67

INDEX

ORDERS—*continued.*

- local authorities, of—*continued.*
 - subject matters, list of—*continued.*
 - streets, 67
 - Sunday trading, 68
 - town planning, 67

ORDNANCE SURVEY, 69—71

- introductory note, 69
- ordnance maps, admissibility in evidence of, 69—70
 - private boundaries or titles in case of, 70
 - public inquiries, surveys, etc., as to, 69—70
 - purposes for which, 69
 - quasi-public documents, as, 69
 - right of way, in questions of, 70
- and local authorities, 70—71
 - departmental committee, reference to, 70
 - interim report of, 71
 - recommendations by, 71
- town and country planning schemes, use of in, 70
- copyright in, 70—71
- reference in title deeds to, 69
- reproduction by local authorities of, 70
 - revised regulations for, 70
 - royalties, as to, 70—71
- use of in legal proceedings, 69—70

Ordnance Survey Act, 1841, provisions of, 69

ORNAMENTAL GARDENS. *See* titles ESPLANADES; PROMENADES AND [BEACHES; GARDENS AND SQUARES; PUBLIC PARKS; OPEN SPACES.

ORPHANAGES, RATING OF. *See* title RATING OF SPECIAL PROPERTIES.

ORPHANS' HOMES. *See* title POOR LAW INSTITUTIONS.

ORPHANS' PENSIONS, 72—73

- amount of, 72
- child, adopted, 73
 - illegitimate, 73
 - "child," what term includes, 72
- claim forms, supply of, 73
- "orphan" meaning of, 72
- payment, duration of, 72—73
 - to whom, 73
- pensionable age, 72
- qualification for, 72
- statutory conditions as to, 73
- Widows', Orphans' and Old Age Pensions Act, 1925, provisions of, 72
 - voluntary contributors under, 73

OUTDOOR RELIEF, 74—87

- able-bodied men to, 77—78
 - amount of, 77
 - men in receipt of wages or other remuneration, 77
 - non-resident, 85
 - on strike, to family of, 77
- powers of local authorities to employ in cultivation of land, 78
- schemes for providing work and training, as to, 77
- trade union engaged in dispute, boy members of, 78
 - non-members, 78

work available, where, 78

- administering, rules for, 81—82
- administration of, control of Minister, 75
 - inspectors, appointment of, 75
 - duties of, 75
 - local authorities, responsibility of, 75—76

- applications for, adjudicating officers, decisions by, 76
 - enabling order, necessity for, 76
 - London, in, duties of, 76
 - referable matters, as to, 76

- OUTDOOR RELIEF—*continued.*
books and accounts having reference to, 85—86
application and report book, 86
case paper system, 86
custody of, 86
register, contents of, 86
relief order lists, 86
burial, for the purposes of, 70
food and lodging, etc., 75
funeral expenses, 75
general form of, 75
in kind, 75
“relief in kind,” meaning of, 83
in relation to old age and widows’ pensions, 87
unemployment assistance, 86
insurance, 86
workmen’s compensation, 87
income of household to be deducted from, 81—82
money and investments, 82
profit from lodgers, 82
incomes to be disregarded, 70—80
friendly society, payments by, 79
national health insurance, 79—80
trade union benefit, 79
wounds or disability pensions, 80
introductory note, 74
justices’ order for, 77
London, in, 87
meaning of, 75
medical attendance, etc., 75
meaning of, 83
on loan, 83
order for, 83, 84
sickness or accident requiring immediate attendance, as to, 84
medicines, dispensing of, 84
arrangements for, 84
costs of, 84
need, necessity for, 79
non-resident, order for removal to place of settlement, 85
reciprocal arrangements between councils as to, 85
relieving officer, record to be kept by, 85
widow of, conditions of grant to, 85
on loan, 83
medical relief, 83
recovery of, 83
periods for, 80
prohibitions, payment of rent, 82
redemption of pledges, 82
setting up in business, 82
public assistance committees, 75—76
payments by Unemployment Assistance Board to, 86
recipients, supervision of, 80
Royal Commission on the Poor Law and the Relief of Distress, 1909,
[recommendations of, 80]
regulations for, departures from, reports to be made on, 81
steps to be taken on, 81
scales for, 81
London, in, 81, 82
additional relief, 81
sickness, on account of, 79
conditions of grant, 79
statutory conditions governing, 74
sudden or urgent necessity, in case of, 84
institutional relief, order for, 84
relieving officer, responsibility of, 85
Unemployment Assistance Board, functions of, 77
payments to public assistance committees by, 86

INDEX

OUTDOOR RELIEF—continued.

wages, attachment of, order for, recovery of relief on loan by, 83
refusal of employee to observe, action on, 83
widows and women living apart from their husbands, to, 78—79
earnings to be taken into account, 78—79
pensioners, as to, 78

OVERCROWDING, 88—100

abatement of, method of, 90
“appointed days,” 92, 92n.
byo-laws, control by, 99—100
 Rent Restriction Acts, as to, 100
causing or permitting dwelling-house to become, 93
“dwelling-house,” definition of, 90n.
dwelling-house becoming overcrowded, 93
 measurement of, power of entry for, 98
 member of occupier’s family sleeping temporarily in, 93
dwelling-houses, application to, 92
general legislation affecting, 88
houses tied to a particular employment, where, 89
Housing Act, 1936, overcrowding provisions of, enforcement of, 97
 proceedings, institution of, 97
 Part IV., administration of, 98—99
“landlord,” definition of, 92n.
landlord, duty to inform local authority as to, 96—97
rent-book used by to contain information with reference to, 95
 penalty on failure to observe, 95
right to obtain possession of overcrowded house of, 97
licence for increase of permitted number, 94, 95, 95n.
local authority, certificate by, 96
 as evidence in legal proceedings, 96
 duty of landlord to give information as to, 96
 under 1935 Act of, 88—89
information to be given to landlord or occupier by, 96
inspection by, 88, 89
report to Minister by, 88
publication of information as to rights and duties of landlords
 [and occupiers as to, 96, 96n.]
 submission of proposals by, 88—89
survey by, 89—90
 conduct of, 90
 method of, 89—90
 results of, 90
“night shelters,” as to, 92
offences, 92—94
 Housing Act, 1936, institution of proceedings under, 97
overcrowded house, right of landlord to obtain possession of, 97
Overcrowding Report, 90
owner-occupier, in case of, 99
particulars of, duty of medical officers to furnish, 98, 98n.
“permitted number,” ascertainment of, 91
 children, account of, 91
permitted number, increase of, by local authority, 94
 Minister, 94
 licence for, 94—95, 95n.
 information with respect to, 95—96
 statement in rent-book as to, 95
rent book, to contain summary of provisions of 1936 Act, 95
 production of, for inspection, 93
“room,” definition of, 90 n.
standard of, 90—91
 applies only to dwelling-houses, 92
 persons sleeping in, 92
statutory nuisance by, 92, 100
suitable alternative accommodation, application for, 93
“suitable alternative accommodation,” definition of, 92 n.
 offer of, 93

OVERDRAFTS. *See title BANKERS' AND OTHER OVERDRAFTS.*

OVERHEAD WIRES, 101—103
 bye-laws as to, 103
 London, in, 104
 danger from, bye-laws having reference to, 103
 landowner, erected by agreement with, 103
 London, in, London Overground Wires, etc., Act, 1933, provisions of, 103—104
 notice of proposed erection to be given, 104
 consents to, 104
 powers of entry and removal, 104
 exemptions from, 104
 placing over or across street or public road, consent to, conditional, 101—102
 electric lines, ancient monuments, prejudicially affecting, 103
 consents required, 102
 Electricity (Supply) Act, 1919, s. 21, provisions of, 102
 Overhead Line Regulations, subject to, 102
 placing above ground otherwise than in streets, 102—103
 monetary consideration for, assessment of, 103
 where company has no statutory powers of supply, 103
 highway authorities, as to, 101—102
 licensees of Postmaster-General, as to, 102
 providing for a pecuniary payment, 102
 refusal, effect of, 101
 P.H.A., 1925, s. 25, provisions of, 103
 street or road, body having control of, consent by, 101
 refusal to give, 101
 U.D.C. not liable to repair, as to, 101
 Telegraph Act, 1878, differences under, determination of, 101
 appeals against, 101
 telephone and telegraph, 101—102
 tramway and trolley-bus routes, special parliamentary powers for, 103

OWNERS, AGREEMENTS WITH. *See titles TOWN PLANNING AGREEMENTS [WITH OWNERS]; RATING OF OWNERS.*

OWNERS, RATING OF. *See title RATING OF OWNERS.*

OXFORD, CITY OF, 104—107
 corporation by prescription, as, 104
 council, constitution of, 104—105
 habeas data, 105
 University, members of, 105
 sheriff, election of, 105
 University of, rights, privileges, duties and liabilities of, saving for, 105
 special functions granted to, 105—106
 assize of bread, wine and beer, 105
 clubs, registration of, 106
 striking off register, 106
 constables, appointment of, 106
 theatres, public performances, etc., licensing, 106, 107

PALATINATES. *See title HUNDREDS.*

PARISH, 107—110
 accretions to, 108
 ancient, division of, 108
 area of, 107—108
 bounded by sea or tidal rivers, 108
 definition of, 107
 London, in, City of London (Union of Parishes) Act, 1907, effect of, 110
 London, Government Act, 1890, s. 23, provisions of, 110
 metropolitan, vestries may be held for ecclesiastical purposes, 110
 transfer of powers, etc., to borough councils, 109
 "township," use of term, 108
 urban and rural distinguished, 108—109
 transfer of powers of vestry in, 109
 urban parishes in Wales, as to, 109

INDEX

PARISH—continued.

vestry, common, 108
select, appointment of, 108
transfer of powers of in rural and urban parishes, 109
voting at, 108
Wales, transfer of powers of vestry in urban parishes in, 109

PARISH ACCOUNTS, 110—112

adoptive Acts, in connection with, 111
audit, 112
auditor, reports of, copies of, 112
inspection of, 112
banking account, 111
charity, 111
general, 111
inspection of, 111—112
loans, 111
making up, annual, 110
officers, particulars to be given by, 111
parish not having a parish council, as to, 111
statutory requirements, 110—111

PARISH BOUNDARIES. *See titles AREAS OF LOCAL GOVERNMENT; BRADING [THE BOUNDS.*

PARISH CHARITIES. *See title CHARITIES.*

PARISH COUNCIL, 113—123

councillors, number of, 114
tenure of office, 114
committees, 117
appointment of, 117
delegation of powers to, 117—118
excepted powers, 117
joint, 118
members of, co-opted, 117
number of, 117
term of office, scope of authority, etc., 117, 118
constitution of, 114

district council failing to exercise powers under Housing Act, 1936, complaint by, [120

action on, 120
establishment of, 113
powers of county council as to, 113
financial provisions, 121—122
borrowing by, consent of Minister to, 122
loan, balance of unexpended, application of, 122
method of, 122
purposes for which, 122
re-borrow, power to, 123
temporary loans, 123

expenses, chargeability of, 129
precept, form of, 122
rate of, 121
under adoptive Acts, 123
Lighting and Watching Act, 1833...123

instruments under seal, execution of, 114
land, power to hold without licence in mortmain, 114
legal proceedings, authorisation of member or officers to prosecute or defend, 120
meetings, 114—117

admission of public to, 115
annual meeting, 117
business at, 117
chairman, election of, 117
notice of, 117
time of holding, 117
convening, 115
refusal of chairman to call, 115
who may call, 115

INDEX

PARISH COUNCIL—*continued.*

- meetings, notice of, 115
 - business to be transacted to be specified on, 115
 - publication of, 115
 - signing, 115
 - time for, 115
- number of, 115
- place of, 114—115
 - licensed premises, as to, 113
 - schoolroom, 114, 115
 - suitable room, use of, 114
 - purposes, for which, 114
- proceedings at, 118
 - business, regulation of, standing orders as to, 116
 - chairman, 116
 - cheques, signing, 116
 - minutes of, 116—117
 - custody of, 117
 - evidence as, 117
 - reading, 117
 - signing, 117
 - names of members present at to be recorded, 116
 - quorum, 116
 - validity of, Act of 1933, provisions of, 116
 - voting, 116
 - summons to attend, 115
- mortgages by, form of, 122
 - register of, 122
 - inspection of, 122
 - repayment, 122
- officers of, 120
- origin of, 113
- parishes, grouping of, 114
- parochial committee of, delegation of powers of R.D.C to, 121
- "population," meaning of, 113
- powers and duties of, 118—121
 - acquisition of land for recreation grounds, etc., 118
 - adoptive Acts, with reference to, 118
 - buildings for parish offices, provision of, 119
 - Education Act, 1921, under, 120
 - fire engines, escapes, etc., provision of, 118
 - mortuaries, post-mortem rooms, etc., to provide, 120
 - open ditches, drains, etc., cleansing, 119
 - parish books, provision of, 118
 - public footpaths, repairs and maintenance of, 119
 - recreation grounds, village greens, public walks, etc., as to, 118—119
 - rights of way, acquisition of, 119
 - under the Act of 1894...118—119
 - 1933...119
 - vestries, churchwardens and overseers, as to, 118
- war memorial, keeping in repair, 120
- water, to provide facilities for obtaining, 119
- works consequential on exercise of, to execute, 119
- public notice by, 121
 - right of way, stopping up, consent to, 119
- rural parish having no, 113
- treasurer of, appointment of, 120

PARISH COUNCIL, CHAIRMAN OF. *See title* CHAIRMAN OF PARISH COUNCIL.

PARISH COUNCIL, CLERK TO. *See title* CLERK TO PARISH COUNCIL.

PARISH COUNCILLOR, 126—127

- absence from meetings for six months consecutively, effect of, 126—127
- acceptance of office, declaration of, 126
- failure to make, effect of, 126
- time for, 128
 - casual vacancy, in case of, 128

INDEX

PARISH COUNCILLOR—continued.

- casual vacancies among, election to fill, procedure on, 127
- contract with council, having an interest in, effect of, 125
 - abstention from voting on questions having reference to, 125
 - disclosure, necessity for, 125
 - exempted cases, 125
 - married persons, common interest of, 125
 - notice in writing of, 125—126
- council meetings, failure to attend for six months consecutively, vacation of [office on, 128—127
 - voting at, method of, 127
- disqualification of, 125
 - L.G.A., 1933, s. 39, provisions of, 125
- election of, 124
 - county council, powers of, 124
 - mode of, 124
 - wards, for, 124
 - omission to hold, powers of county council on, 127
- local government electors, who are, 125
- qualification of, 124—125
 - age, of full, 125
 - British subject, 125
 - landowner, 125
 - residence, 125
- resignation of, 126
- retirement of, 126
- term of office, 126
- wards, division of parish into, 124
 - application for, 124
 - election of councillors for, 124

PARISH DOCUMENTS, 128—129

- custody of, 128—129
 - awards under Inclosure Act, 1845, copies of, 128
 - books and documents relating to affairs of the church or ecclesiastical [charities, 128
 - bye-laws of R.D.C., copies of, 129
 - public books, writings and papers of rural parish, 128
 - urban parish, 128
 - tithe apportionment, copies of, jurisdiction of quarter sessions as to, 128
 - order of county council as to, 128—129
- depository for, duty to provide, 128
- inspection of, 129
 - accounts, 129
 - minutes of proceedings, 129
 - orders for the payment of money, 129
- right of access to, incumbent and churchwardens of, 129
 - parish council or parish meeting of, 129

PARISH IMPROVEMENT, 130

- execution, expenses of, 130
- private subscriptions and donations, 130
 - rate for, fixing, 130
 - precept for, 130
- Public Improvements Act, 1860, adoption of, 130
 - mode of, 130
 - execution of, authority for, 130
 - provisions of, 130

PARISH MEETING. *See title* CHAIRMAN OF PARISH MEETING.

PARISH MEETINGS, 131—136

- acts of, signifying of, 132
- annual date of, 131
- committees, acts of, submission for approval, 134
 - power to appoint, 134
- constitution of, L.G.A., 1933, s. 43 (1), provisions of, 131
- convening, by whom, 132
 - mode of, 132

PARISH MEETINGS—*continued.*

- expenses, 135—136
 - borrowing, as to, 136
 - chargeability of, 135—136
 - precepts, issue of, 136
 - rate, limiting, 135—136
- land, acquisition of, as to, 135
 - holding for purposes of parish, 132
 - minutes of proceedings, custody of, 134
 - drawing up, signing and entry of, 134
 - evidence, as, 134
- officers, as to, 135
- parish, for portion of, where, 131—132
 - "parish," meaning of, 131
- persons entitled to attend, 133
 - candidates for election, as to, 133
 - local government electors, 132—133
- place of, licensed premises, as to, 133
 - schooldroom, 133
 - suitable room, provision of, 133
- poll, 134
 - demand for, 134
 - how taken, 134
- powers and duties, 134—136
 - adoptive Acts, as to, 134
 - charities, in relation to, 134—135
 - Education Act, 1921, under, 135
 - highway, to declare unnecessary, 135
 - land held by "representative body" for, give directions as to, 135
 - sewerage or water supply, default of R.D.C., complaints as to, 135
 - stopping up public right of way, consent to, 135
 - vestry, churchwardens and overseers to exercise certain powers of, 134—135
 - works, execution of, 135
- public notice of, 132
 - contents of, 132
 - publication of, 132
- quorum, 132
- service of documents on, 132
- times and places of, 131
- voting at, chairman, casting vote by, 133
 - elections, 133
 - questions before, 133

PARISH PROPERTY, 136—139

- buildings for offices and parish and public meetings, provision of, 138
- charitable purposes, land held for, letting, 139
- classes of, 136—137
 - allotments under an inclosure award, 137
 - poor, lands acquired for the employment of, 136
 - workhouses or cottages for the accommodation of, 136
- stock, etc., purchased with proceeds of sale of, 137
- vestry rooms and parochial offices, 137
- village pounds, etc., 137
- gifts of property, acceptance of, 139
- land, acquisition of, 138
 - purposes for which, 138
 - power to let, 139
 - sale or exchange of, 139
- "land" what term includes, 138
- rents and profits applicable to general benefit of parish, 138
- repair of roads, land acquired for the purpose of supplying materials for, 138
- statutory definition of, 138
- vesting of, abolition of overseers, 137
 - Acts of 1804 and 1933, effect of, 137
 - chairman and overseers of parish, powers of, 137
 - Overseers Order, 1927, provisions of, 137, 138
 - "representative body," constitution and powers of, 137
 - rural parish with parish council, as to, 137

INDEX

- PARISH PROPERTY**—*continued.*
 vesting of, rural parish without parish council, as to, 137
 urban areas, in, 138
- PARKING PLACES**, 140—142
 adaptation of, 140, 141
 definition, 140
 land, acquisition or appropriation of, for purposes of, 140
 local authorities, provision by, 140—141
 acquisition of land for purposes of, 141
 bye-laws, power to make, 141
 notices of intention to provide, objections to, 140
 publication of, 140
 orders, revocation of, 140
 powers under Ribbon Development Act, 1935...141
 Road Traffic Act, 1930...141
- station for public service vehicles as, order appointing, 141
 charges, power to make, 141
 consent of Minister to, 141
 furnishing, etc., 141
 letting, 141
 publication of intention to make, 141
 revocation of, 141
 term of, 141
- London traffic area, outside the, 140—141
 within, 141—142
 statutory regulations as to, 141—142
- public service vehicles, as station for, 141
- signs indicating, 140
- street, access to premises adjoining, must not obstruct, 140
 use of part of as, 140
- superintendents of, appointment of, 140
- underground, charge for use of, 141
- PARKS.** *See title OPEN SPACES; PUBLIC PARKS.*
- PARLIAMENTARY AGENTS**, 142—143
 advice generally, 142
 charges of, 143
 division of or payments out of, as to, 143
 taxation of, 143
 declaration by, 143
 draft Bills, etc., preparation of, 142
 main functions of, 142
 private business, an officer of Parliament for the purposes of, 143
 profession of, audience, rights of, 143
 qualifications for, 143
 report of Joint Selection Committee of 1876, on, 143
 registration of, 143
 rules, orders and practice of Parliament, responsibility as to observance of, 142
 Society of Parliamentary Agents, establishment of, 143
- PARLIAMENTARY BILLS.** *See title BILLS, PARLIAMENTARY AND PRIVATE.*
- PAROCHIAL CHARITIES.** *See title CHARITIES.*
- PAROCHIAL ELECTORS.** *See title LOCAL GOVERNMENT ELECTORS.*
- PAROCHIAL TRUSTS.** *See title CHARITIES.*
- PARTY WALLS.** *See title BUILDING BYE-LAWS.*
- PASSAGE BROKERS.** *See title EMIGRANT RUNNERS AND PASSAGE BROKERS.*
- PASSAGES.** *See title REPAIR OF ROADS.*
- PASTURE GROUNDS.** *See title DERATING.*
- PAUPER LUNATICS.** *See title PERSONS OF UNSOUND MIND.*
- PAVING AND SEWERING OF PRIVATE STREETS.** *See title PRIVATE STREETS.*

- PAWNBROKERS, 145—147
 “carrying on the business,” meaning of, 146
 contracts of pawn exceeding £10, as to, 146
 certificate, authority of grant, 146
 application for, notice of, 146
 contents of, 146
 publication of, 146—147
 forged, licence granted in pursuance of, as to, 147
 forging or uttering, 147
 refusal of, grounds for, 147
 appeal against, 147
 term of, 147
- definitions, 145
- licence, annual excise, 146
 grant of, condition of, 146
 executor's administration, etc., to, 146
 forged certificate, in pursuance of, 146
- London, in, certificate, authority of grant, 147
- persons under sixteen, receiving pledges from, penalty for, 147
- property unlawfully pawned, order for restoration of, 147
- suspected offenders, power to detain, 147
- “pawn or pledge,” meaning of, 145, n.
- PEDLARS, 148—150
certificate, acting without, penalty for, 149
 application for, 149
 assigning or borrowing, 149
 deprivation of, grounds for, 149
 endorsement of, 149
 fee for, 149
 grant of, 149
 conditions of, 149
 necessity for, exempted persons, 149
 person holding, conviction of, 149
 not exempt from Vagrancy Acts, 149
 production of, 149
- charitable purposes, selling for, 148
- hawker, distinguished from, 148
- “hawkers,” under Markets and Fairs Clauses Act, 1847, s. 13, to include
[pedlars, 148]
- horse and cart, use of, 148
- London, in, granting authority, 149
 statutory regulations having reference to, 150
- “pedlar,” meaning of term, 148
- person using motor car, as to, 148
- sale of gold or silver articles by, liability to duty, 149
- “sell,” “barter” included in term, 148
- PENALTIES, 150—156
application of, court fees, 152
 fund or person as directed by enactment, payments to, 152
 informant or complainant, repayment of costs, etc., to, 152
 informers, payments to, 152
 police fees, 152
under Food and Drugs (Adulteration) Act, 1928, s. 32...152
 Highway Act, 1835, s. 96...152
 Public Health Acts, 152
 Road Transport Lighting Act, 1927...152
 Roads Act, 1920, s. 13 (5)...152
 Towns Improvement Clauses Act, 1847, s. 210...152
- bye-laws under, 151
- introductory note, 150—151
- local government, in statutes relating to—
 administration, 152—153
 celluloid and cinematograph film, 153
 elections, 153
 food and drugs, 153
 housing, 153

INDEX

PENALTIES—*continued.*

- local government, in statutes relating to—*continued.*
 - infectious diseases, 153
 - maternity and child welfare, 153
 - milk and dairies, 153
 - nursing homes, 154
 - petroleum, 154
 - rating, 154
 - ribbon development, 154
 - sanitation and buildings, 154
 - smoke nuisance, 154
 - water supply, 154
- London, in—
 - under L.C.C. (General Powers) and other local Acts, 156
 - London Building Act, 1930, application of, 155
 - recovery of, 155
 - Metropolis Management Act, application of, 155
 - Metropolitan Police Act, 1829, application of, 155
 - P.H. (London) Act, 1936, Part II, application of, 154
 - Part VII., application of, 155
 - recovery of, 155
 - recovery of, proceedings for, consent of Attorney-General to, 151
 - general method of, 151
 - proceedings for, who may institute, 151
 - two or more sums, 151
 - warrant of distress and committal, by, 151
 - power of sale, as to, 151

PENNY RATE, 156—159

- area, financial strength of, index of, 156
- expenditure, limitations of, catchment boards, contributions by county and [county borough councils to, 159
- under Health Resorts and Watering Places Act, [1936...159
 - Model Scheme of Loan Consolidation, 159
- introductory note, 158
- precepts, application to, 156—157
- product, calculation of, 156—157
 - certification by auditor of, 158
 - poundage, variation in, 157
 - Rate Product Book, entry in, 158
 - rating area, in respect of portion of entry, 157
 - rule for, 157
- estimate of, modification by financial officer, 158
- rating authorities to transmit to county council, 157—158
- Exchequer grants, application to in respect of elementary education, [158
- housing scheme, 158
- L.G. (Financial Provisions) Act, 1937, s. 3, under, 158—159

PENSIONS. *See titles OLD AGE PENSIONS COMMITTEE; ORPHANS PENSIONS; POLICE PENSIONS; SUPERANNUATION.*

PERFORMING ANIMALS, 160—163

- "exhibit," meaning of, 160, n.
 - exhibiting or training, conditions, order imposing, 161
 - appeal against, 161
 - persons, registration of, 160
 - application for, 160
 - contents of, 160
 - power of court to impose conditions as to, 161
 - prohibit or restrict, 161
 - premises on which, power to enter and inspect, 161
 - limitation of, 161
 - restriction upon, 160—161
- Performing Animals (Regulation) Act, 1925, application to London, 163
 - authorised officers under, 162
 - enforcement of, 162

PERFORMING ANIMALS—*continued.*

Performing Animals (Regulation) Act, 1925, exemptions from, 162
 offences against and legal proceedings under, 161—162
 powers and duties of local authorities [under, 160]

Protection of Animals Act, 1911, conviction under, effect of, 162
 1934, provisions of, 162
 register, entry in, variation of, 161
 removal of name from, 162
 registration, certificate of, 161
 copies to be supplied, 161
 endorsement of, 161, 162
 production to officer, 162
 inspection of, 161
 purpose of, 162
 re-registration, when necessary, 162
 "train," meaning of, 160, n.

PERSONATION. *See* title CORRUPT AND ILLEGAL PRACTICES.

PERSONS AGGRAVED. *See* title OBJECTIONS TO MINISTERS.

PERSONS, CLEANSING OF. *See* title CLEANSING OF PERSONS.

PERSONS OF UNSOUND MIND, 164—190

Acts and rules relating to, administration of, 166
 control, 166
 local, 166
 admission of temporary patient to hospital, 169
 application for, 169
 notice of, 169
 recommendation for, 169
 certification of—
 justice, notification of, 175
 medical certificates, necessary for, 175
 examination prior to, 175
 person not under proper control or cruelly treated, 175
 wandering at large, apprehension of, 175
 procedures for, 174—175
 relieving officer, notification by district M.O.H., of, 174
 certified, admission to hospital of, 177
 Board of Control, notice to, 177
 entries of, 177
 care and treatment of, 177—179
 boarding out, 179
 correspondence, as to, 178
 examination of, 178
 leave on trial, 178
 mechanical restraint, 178
 medical statement to Board of Control, 177
 nursing, 179
 property of, inquiries as to, 178
 expenses, order for recovery on, 178
 visitation, 178, 179
 death, notification of, 180
 discharge, powers of Board of Control as to, 179—180
 examining justice, 179
 visiting committee, 179
 escape by, recapture, time for, 179
 Scotland or Ireland to, 179
 transfer of, 179
 emergency procedures for placing under care, 176
 justice, order for removal of patient by, 176
 liability of relatives or others to maintain, 174
 licensed houses, rate aided certified patients in, provisions relating to, 180—181
 local authorities, general administration by, 186
 Lunacy and Mental Treatment Acts, powers under, 186
 visiting committee, appointment of, 186—187
 constitution and duties of, 187

INDEX

PERSONS OF UNSOUND MIND—*continued.*

- local authorities, provision of accommodation by, 166, 187—188
 - finance, 187—188
 - method of, 187
 - plans and contracts, 187
 - records to be kept, 188
 - staff, management, etc., 188
- mental hospital, books and records of, 177
- Mental Treatment Rules, provisions of, 170—171
 - absence on trial, 170
 - correspondence, 171
 - escape, 171
 - examination, 171
 - mechanical restraint, 171
 - property, 171
 - removal, notice of, 170—171
 - seclusion, 171
- nomenclature, use of, requirements of Mental Treatment Act, 190
- not under proper control, or cruelly treated, etc., information as to, 175
 - order for reception into hospital of, 175
 - medical certificates, necessarily for two, 175
- out-relief, patients receiving, 182
- patients, chargeability of, 166, 167, 169, 174
 - classes of, 165
 - places for the reception of, 165—166
 - private—
 - local authorities, powers of, 182
 - out-patient treatment, 182
 - reception order, under, admission into public mental hospitals, [184]
 - care and treatment, 185
 - death, 185
 - discharge, 185
 - licensed houses, in, 185
 - visitation of, 183
 - registered hospitals, 186
 - single patient, report on, 186
 - single patient, reception and care of, regulations for, 189
 - second, permission to take, 190
 - visitation of, 189
 - temporary, in public mental hospital, etc., 183
 - absence on trial, 183
 - discharge, 183
 - removal, 183
 - reception elsewhere, 183—184
 - absence on trial and removal from, 184
 - discharge, 184
 - voluntary, as to, 183
 - single case of, 183
- rate-aided—
 - admission to institution of, classification of, 176
 - emergency procedures, 176
 - reception order, 176
 - statutory regulations for, 175
 - certified, certification, procedures for, 174—176
 - licensed houses, in, 180
 - admission to, 180
 - care and treatment, 180
 - certification, 180
 - death, 181
 - discharge, 180
 - transfer, 180—181
 - mental hospitals, admission to, 177
 - care and treatment, 177
 - correspondence, 178
 - death, 180
 - discharge, 179
 - escape, 179

PERSONS OF UNSOUND MIND—*continued.*

- patients, rate-aided—*continued.*
certified, mental hospitals, admission to—*continued.*
examination of, 178
leave on trial, 178
mechanical restraint, 177
property, 178
transfer, 179
visitation, 178
chargeability of, place of settlement, inquiries as to, 174
justices, determination by, appeals against, 174
district medical officer, notification by, 174—175
justice, examination by, 175
order for detention by, 175
medical practitioner, certificate of, 175
mental hospital accommodation for, duty of local authorities to [provide, 174
out-patients, treatment of, 166
centres for, provision of, 166
out relief, in receipt of, 182
Public Assistance Institutions and Municipal Hospitals, in, [181—182
reception order, treatment under, 174
local authorities, duties of, 174
expenses of, 174
maintenance, cost of, 174
liability of relatives for, 174
temporary—
chargeability of, settlement, inquiries as to, 169
liability of relative or other person to maintain, 169
received elsewhere, 172—174
admission, 172
Board of Control, statement to, 172
care, 172—173
death, 174
discharge, 173
by Board of Control, 173
local authority, 173
visitors, 173
expressing himself willing or unwilling to [receive treatment, on, 173
Mental Treatment Rules, application of, provisions of, [173
received in mental hospitals or under s. 6 (4) of Mental Treatment Act, 1930...170—172
admission, application for, 169
notice of, 170
care of, 170—171
death, notice of, 172
discharge, 171
Mental Treatment Rules, application of, 170—171
treatment, period of, 170
renewal of, application for, 170
visitation of, 170
reception into hospital, contract for, 168
treatment, provision for, 168
liability of relations as to, 169
treatment of, 166
out-patient, 166
voluntary, powers of local authorities as to, 166—167
voluntary—
admission into institution of, conditions and terms of, 166—
chargeability of, 167
powers of local authorities as to, 166—167
received elsewhere than in mental hospitals, etc., 168
into mental hospitals, or under s. 6 (4) of Mental Treatment Act, 1930...167—168

INDEX

PERSONS OF UNSOUND MIND—continued.
patients, rate-aided—continued.

 voluntary—continued.

 received into, admission, application for, 167
 death, notice of, 168
 departure, notice of, 167—168
 discharge by Board of Control, 168
 ill-usage of, penalties for, 168
 patient under sixteen, neglect of guardians, etc.,
 [report on, 168]

 reception, notice of, 167

 wandering at large, apprehension of, 172

 types of, 165

preliminary note, 165—166

public assistance institutions and municipal hospitals, mental patients in,
 [provisions affecting, 181—182

 chronic, 182

 discharge of, 182

quarter sessions, appeals against decisions as to settlement to, 174

reception of, places for, 165

 order, medical certificate for purposes of, validity of, 176

 examinations prior to making, 176

 suspension of operation of, 176

 urgency, in case of, 176

 who may sign, 176

 interested persons, as to, 176

settlement, place of, decision of justices as to, 174

 appeals against, 174

treatment of, statutory provisions governing, 165

visitation of, statutory, 188—189

 commissioner, by, 189

 licensed houses, 189

 mental and registered hospitals, 189

 single patients, 186, 189

visiting committee, appointment of, 166, 186

PETROL FILLING STATIONS, 190—195

amenities of neighbourhood, protection of, 191

“amenities,” what term includes, 191, n.

bye-laws, area applicable to, indication of, 191

 compliance with, protection of occupiers as to, 193

 confirmation of, 191

contravention of, penalties on, 193

model form of, 191—192

 adoption by councils of, 192

 provisions of, 192

power of local authorities to make, 191

 City of London, as to, 101

preventing the establishment of, 192

regulating the appearance of, 191

erection of, control of, 191—193

 removal, pulling down or alteration of, 194

 town and country planning schemes, under, 193—194

 notice of intention as to, 193

existing, removal of, conditions of, 192

general note on, 190

London, in, erection of, consent of City corporation to, 195

 refusal of, appeal against, 195

 L.C.C. (General Powers) Act, 1933, provisions of, 195

 Petroleum (Consolidation) Act, 1928, local authorities under, 195

meaning of, 191, n.

petrol pumps, accuracy of, 194—195

 inspection and testing of, 195

PETROLEUM, 196—203

accidents due to, inquiries as to, 200

 notification of, 200

Board of Trade, grant of licences by, 197

- PETROLEUM**—*continued.*
- bye-laws, canal, 199—200
 - harbours, 200
 - definitions—
 - “oil,” 196
 - “petroleum,” 196
 - “petroleum spirit,” 196
 - gas, natural, supply of by holders of prospecting or mining licences, 197
 - inspection, inspectors, interference with, penalties for, 201
 - powers of, 200—201
 - samples, power to take, 201
 - testing, notice of time and place, 201
 - introductory note, 196
 - keeping in contravention of regulations, etc., search warrant, grant of, 201
 - licences, fees for, 118
 - petroleum spirit, 197—198
 - grant of, 198
 - authorities for, 198
 - harbour authority, by, 198
 - prospecting, etc., supply of natural gas by holders of, 197
 - transfer of, 198
 - London, in, licences in, 202—203
 - “petroleum oil depot,” meaning of, 203
 - petroleum oil, storage of, statutory regulations for, 203
 - sewers and drains, allowing petroleum to enter, penalties for, 203
 - Oil in Navigable Waters Act, 1922, administration of, note on, 202
 - ownership, Petroleum (Production) Act, 1934, provision of, 197
 - Petroleum (Consolidation) Act, 1928, other substances subject to, 201
 - petroleum spirit, containers for, labelling, 199
 - imported, “kept,” when, 197
 - storage in bulk of, notification of, 198
 - use of as means of transport, not to be deemed “conveyed.”
 - [197]
 - prospecting for and getting—
 - amenities of locality to be considered, 197
 - highway, laying pipes under, objections to, 197
 - licences for, 197
 - powers of compulsory acquisition and rights to work, 197
 - Rules and Orders with reference to, 196, n.
 - safety measures, statutory provisions as to, 200
 - sewers, in, P.H.A., 1936, s. 27, provisions of, 201—202
 - storage, etc., 197—198
 - conditions of, 198
 - publication of, 198
 - safety measures for, provision of, 197
 - transport by road, regulations for, 197
 - sea, bye-laws of harbour authorities as to, 199
 - PETTY SESSIONAL COURT HOUSE.** *See title OFFICIAL BUILDINGS.*
 - PIERS**, 204—208
 - bye-laws for regulating the use of, 208
 - construction of preliminary considerations, 204—205
 - or acquisition of, by local authority, 205
 - local Acts, under, 207
 - provisional orders, under, 205—206
 - Harbours, Docks and Piers Clauses Act, 1847, provisions of, 208
 - introductory note, 204
 - lease or sale of, 206—207
 - local authority, power to make bye-laws of, 208
 - powers of in general, 207
 - London, in, construction, management, etc., of, powers of Port of London
 - [Authority as to, 209
 - powers of L.C.C. as to, 209
 - Lowestoft Corporation Act, 1934, provisions of, 207
 - provisional order, construction or acquisition under, 205—206
 - advances for, 206
 - General Pier and Harbour Act, 1861, provisions of, 206
 - [20]

INDEX

PIERS—*continued.*

- provisional order, construction or acquisition under—*continued.*
 - local authority, lease or sale to, 206
 - memorandum on, 206
 - public body by, loan for, 206
 - site of, ownership, as to, 204—205
 - parish, accretion of land to, 205
 - maritime boundary of, 205
 - use of, charges for, 207
- waterway, keeping open, 207

PIGS. See title **ANIMALS, KEEPING OF.**

PIGSTY. See title **ANIMALS, KEEPING OF.**

PILOTS, 209—211

- Board of Trade, powers as to, 210
- by-laws affecting, 210
 - confirmation of, 210
 - power of pilotage authority to make, 210
 - publication of, 210
- introductory note, 209
- licence, 210
 - form of, 210
 - grant of, 210
 - production of, 210
 - revocation or suspension of, 210
- licensed, limitation of number of, 210
- offences by, 210—211
- payment, rates of, 210
- pensions, contributions to, 210
- pilot fund, contributions by ship-owners to, 210
- Pilotage Act, 1913, offences under, 210—211
 - power of Board of Trade under, 210
 - provisions of, 210
- pilotage authorities, 210
 - administrative expenses of, provision for, 210
 - certificate of, 210
 - constitution of, 210
 - limitation of liability of, 211
 - orders of Board of Trade as to, 210
 - power to make bye-laws of, 210
- districts, establishment of new, 210

PIPES. See title **WATER SUPPLY.**

PLAGUE. See title **INFECTIOUS DISEASES.**

PLANS, 212—224

- approval, duration of, 217—218
 - P.H.As., under provisions of, 217—218
 - or rejection of, 215—216
 - local authorities, by, 215—216
 - town-planning, applications as to, 216—217
- approved, non-compliance with, 218—219
 - matters not disclosed in, 219
 - variation of work, by, 218
- buildings, existing, alteration, extension, etc., of, notice of, 223
- for business, etc., abutting upon a highway, 223
- by land, application relating to the use of, to be supplied with, 215
- bye-laws, not in compliance with, approval of, where, 221
- defective, whether, determination of, 218
- deposit of, powers to require—
 - under local Acts, 213
 - P.H.A., 1875...212
 - 1936...212
- Restriction of Ribbon Development Act, 1935...213
- Town and Country Planning Act, 1932...213

- PLANS—*continued.***
 deposited, nature of, 219—220
 block plans, 220
 building byo-laws, requirements of, 219—220
 drawings and reproductions of, 219
 new buildings, as to, 220—221
 particulars to be shown in, 220
 photo copies, 219
 scales, minimum, 220
 signature to, 221
 town planning, 221
 examining and approving, 221
 surveyor, report by, 221
 flats, erection of, 223
 land unit, application for declaration of, plot plans, 222—223
 local authority, approval by, 215
 mandamus to enforce, 216
 notice of, 216
 rejection by, 215—216
 grounds for, 215—216
 notice of, 216
 retention by, 217
 London, in, fees payable, 224
 scale, colouring, etc., rules as to, 224
 model clauses for use in the Preparation of Schemes, 1937, Part VII. under, 215
 new streets, of, inspection of, 222
 notice of rejection, contents of, 216
 of new buildings, 214
 street, by persons intending to lay out, 213—214
 P.H. (Building in Streets) Act, 1888, s. 3, “written consent,” what constitutes, [222]
 Restriction of Ribbon Development, notice under, 223
 highway authority, to, 223
 where bye-law and planning authorities are one, 223
 retention by local authority, 217
 under building bye-laws, 217
 “site,” 214—215
 submission of—
 under building bye-laws, 214
 town planning interim development, 214
 schemes, 215
 surveyor’s report on, 221
 form of, 221
 town planning requirements, 214, 222
 approval or rejection, considerations as to, 222

PLANT AND MACHINERY. *See title MACHINERY, RATING OF.*

- PLANTING OF TREES, 224—229**
 general considerations as to, 228
 local legislation having reference to, 228
 London, in, Open Spaces Act, 1906, application of, 229
 roads, etc., powers of L.C.C. and metropolitan boroughs as to, 229
 town planning, statutory authority with reference to, 229
 open spaces and cemeteries, in, 228
 parks, public walks and open spaces, in, 224—225
 statutory authority for, 225
 roads, in, 225—227
 amenities of district, as to, 226
 damage caused by, compensation for, 226—227
 Development and Road Improvement Funds Act, 1909, financial assistance [under, 227]
 estimated expenditure on, provision for, 226
 fruit trees, 226
 guards for, 225
 highway, must not hinder reasonable use of, 225
 repairable by inhabitants at large, 225
 loans for provision of, 226

INDEX

PLANTING OF TREES—continued.

- roads, in—*continued*.
 - nuisance from, 225
 - Roads Improvement Act, 1925, s. 1, powers under, 226
 - telegraph lines, interference with, as to, 227
- Roads Beautifying Association, constitution and functions of, 228—229
- roadside planting, expert methods of, 228
- special purposes of, 228
- town planning schemes, preservation of trees under, 227
- tree warden, appointment of, 228

PLATFORMS. *See title* SAFETY PROVISIONS OF BUILDINGS AND STANDS.

PLAY-CENTRES. *See title* EDUCATION SPECIAL SERVICES.

PLAYING FIELDS. *See title* GAMES, PROVISION FOR.

PLEASURE BOATS, 230—233

- boatmen, etc., qualification of, 230
- bye-laws with reference to, 230—231
- definition, 230
- “Foy men,” 232
- hire of, fixing rate of, 230
- lakes, etc., in public parks, as to, 231
- licences, fees for, 231
 - grant of, 231
 - number of persons to be carried to be specified in, 231
 - revocation, suspension or withdrawal of, 231
 - appeal against, 231
- vessels licensed by Board of Trade as to, 231
- local authorities, powers of, 230—231
 - provision of and letting for hire by, 231
- London, in, powers of L.C.C. and metropolitan borough councils as to, 232
- Thames, statutory provisions respecting, 233
- mooring places for, 230
- number of persons to be carried to be shown, 231
- numbering and naming, 230
- owner of, name to be shown, 231
- persons to be carried in, number of, 230
- private Acts, referring to—
 - Tees Conservancy, 232
 - Thames Conservancy, 232
 - Severn Navigation, 232
- proprietors, boatmen, etc., of, licensing, 230, 231
- P.H.A. (Amendment) Act, 1907, s. 94, provisions of, 231
- steamboats as, 230

PLEASURE GROUNDS. *See titles* OPEN SPACES; PUBLIC PARKS.

PLEASURE STEAMERS. *See title* PLEASURE BOATS.

FLYING FOR HIRE. *See titles* HACKNEY CARRIAGES; LONDON ROADS AND [TRAFFIC; PUBLIC SERVICE VEHICLES.]

POISONS, 234—237

- containers, etc., 236
- hospitals and institutions, supply to out-patients of, 236
- inspectors, appointment of, 230—237
 - functions and powers of, 237
 - legal proceedings by, 237
 - obstructing, etc., penalty for, 237
- introductory note, 234
- labelling, conditions of, 236
- legal proceedings, evidence in, 237
- listed sellers of, 234
 - list, applications for inclusion in, 234—235
 - refusal of, appeal against, 235
 - entry on fees for, 234
 - evidence, as, 237
 - inspection of, 235
 - particulars of premises to be entered on, 234

INDEX

POISONS—*continued.*

Pharmacy and Poisons Act, 1933—
 administration of, local authorities for, 234, 237
 enforcing, expenses of, 237
 offences against, 237
 penalties under, 237
 sales of, arsenical weed-killers, as to, 236
 breaking bulk, 236
 hair-dressers, by, 236
 permissible, list of, 235
 restrictions on, 235—236
 exemptions from, 235
 special conditions attaching to certain, 235—236
 sellers, “authorised,” 234
 “listed,” 234
 storage, 236
 travelling vans, hawking and automatic machines, as to, 235

POLICE, 238—250

allowances, rent, uniform, etc., 244
 appointment, chief officer, 243
 conditions of, 243
 holder of licence under liquor licensing law, as to, 243
 probationary term, 243
 arrest, powers of, 240
 “Assize of Arms,” 239
 canal and river, 249
 clothing, equipment, etc., 244
 constable, area of jurisdiction, 242
 common law, powers of, 240
 arrest, 240
 breach of the peace, 240
 felony, 240
 premises, entry upon, 240
 statutory, powers of, 241—242
 Road Traffic Acts, under, 242
 Vagrancy Act, 1824, s. 4, arrests under, 241
 discipline, code of, 244
 duty, hours of, 244
 forces of England and Wales, 239
 establishment, control and administration of, 242—244
 mutual aid agreements between, 245—246
 harbour and dock, 249
 “headborough,” 238
 “hue and cry,” 238—239
 introductory note, 238—240
 local purposes, special appointments of constables for, 248—249
 medical attendance, 244
 parish constables, 248
 park-keepers, etc., 249—250
 pay, scales of, 244
 police fund, management of, authorities for, 246—247
 miscellaneous payments to, 247
 sources of, 247
 rate, government grant, 247
 levying by local authorities, 247
 Port of London Authority, 249
 promotion, 244
 railway, 248
 ranks and designations, 243
 River Tyne police force, 248
 strength, approval of Secretary of State as to, 243
 system, origin and growth of, 238—240
 “tithe-man,” 238
 urban districts, provision for, 248
 warrant, arrest without, 240
 watchmen, appointment of, 239

INDEX

- POLICE, CITY OF LONDON, 250—252
 administrative staff, division comprising, 251
 authority, extent of, 251
 City, division of for purposes of, 251
 "liberties," 251
 Commissioner of, appointment of, 250
 powers and functions of, 251
 constables, special powers of arrest of, 252
 finance, sources of, 252
 history of, 250
 introductory note, 250—251
 Metropolitan police, co-operation with, 251—252
 organisation of, 250—251
 police districts, 251
 rate, damages payable out of, 252
 riot, damage by, compensation for, 252
 "street offences," 252
 Thames and bridges, as to, 251

POLICE PENSIONS, 253—264
 approved service, 250—260
 another force, in, 259
 interchange of services, 260
 pension period, in respect of, 260
 rejoining member, 260
 reserve forces, in, 260
 assignment, as to, 262
 assured, 254
 children's allowances, 257—258
 double, 253
 City of London, 254
 finance, county or borough areas, 254
 Metropolis, 254
 fire-police, 262—263
 "past pensionable service," 263
 forfeiture, appeals against, 262
 gratuities, general rules, 250
 to child, 258
 relative, 258
 widow, 258
 incapacity, discontinuance of, re-entry into service on, 261
 due to injury received in execution of duty, where, 255, 256
 medical examination as to, 261
 special treatment during, 261
 income tax with reference to, 263—264
 inspector of constabulary having previous service in a police force, in case of, [260]
 London, in, statutory provisions as to, 264
 ordinary, 254
 pay, deductions from, 260—261
 repayment of, when, 261
 payments, in advance, 262
 incidents of, 262
 minor, on behalf of, 262
 to third parties, etc., 262
 withdrawal of, 262
 Pensions (Increase) Acts, provisions of, 263
 police authorities, 253—254
 regulations by, 263
 Police Pensions Act, 1921, provisions of, 253
 quartet sessions, appeals to, 262
 retirement, age limit for, 254
 chief officers, extension of time for, 254
 compulsory, 254
 scales of, 255—256
 special, 255—256
 constables in case of, 261
 suspension of, 262

POLICE PENSIONS—*continued.*

widows, 257
 general rules, 257
 ordinary, 257
 special, 257

POLICE STATIONS. *See* titles **STANDING JOINT COMMITTEE**; **WATCH COMMITTEE**.

POLIOMYELITIS. *See* title **INFECTIOUS DISEASES**.

POLL. *See* title **ELECTIONS**.

POLLING DISTRICTS. *See* title **ELECTIONS**.

POLLING STATION. *See* title **ELECTIONS**.

POLLUTION OF RIVERS, 265—277

Advisory Committee of 1927, reports of, 266
 definitions—

“ harbour,” 270
 “ person,” 273
 “ polluting,” 273
 “ sanitary authority,” 273
 “ solid matter,” 273

fish, matters poisonous or injurious to, by, 270—271

use of dynamite, etc., for taking, 271

gas washing, by, 269

injunction, grant of, 268

local authority, injurious affection of reservoir, canal, etc., without consent of [owner, by, action against, 272

London, in, statutory provisions as to, 277

oil, discharging or allowing to escape into navigable waters, 270

“ harbour,” meaning of, 270

“ pollution,” definition of, 266

pollution, raining from, 274

nuisance by, 266, 271

problem of, 265—266

remedies for, 267—268

abatement, 267

action for injunction and damages, 268

sewage, by, 274

solid refuse, by, 273

statutory prohibition of, under—

Alkali, etc., Works Regulation Act, 1906...269

Cemeteries Clauses Act, 1847...269

Diseases of Animals Act, 1894...269

Gasworks Clauses Act, 1847...269

Land Drainage Act, 1930...270

Lighting and Watching Act, 1833...269

Oil in Navigable Waters Act, 1922...270

P.H.A., 1936...271—272

Rivers Pollution Prevention Acts, 1876, 1893...272—274

Salmon and Freshwater Fisheries Act, 1923...270—271

Waterworks Clauses Act, 1847...268

trade effluents, by, 274

position at common law, 266—267

right to pollute, acquisition of, 267

extent of, 267

riparian owner, rights of, 266

Rivers Pollution Prevention Acts, 272—273

county court, jurisdiction of, 277

orders by, conditions of, 277

works, nature and cost of, inquiries as to, 277

enforcing provisions of, authorities for, 272—275

joint committees under, powers of, 275—276

proceedings under, 277

restriction on, 277

statutory nuisance, by, 271

INDEX

POLLUTION OF RIVERS—*continued.*

statutory provisions against, proceedings to enforce, 274—275
joint committees, constitution of, 275—276
Water Pollution Research Board, reports of, 266
watercourse, obstructing, 270
or ditches upon land laid out for building, filling up, 272

POLYTECHNICS. *See title TECHNICAL AND COMMERCIAL EDUCATION.*

PONDS, 278—281

cleansing of, 278—279
dam or floodgate, unlawfully breaking down or destroying, 278
dangerous, fencing, 279
owners, notice to, 279
P.H.A. (Amendment) Act, 1907, s. 30, applicability of, 279
work done by local authority on default of owner, recovery of expenses of, [279]

introductory note, 278

local authorities, powers as to, 278

London, in, rubbish, depositing in, Metropolitan Police Act, 1839, provisions of, [281]

sanitary authorities, powers of, 280

ancient mills, as to, 280

exercise of, appeals against, 281

notice to owner to fence, etc., 279

pollution, foul water, by, 279

gas washings, by, 279

penalties for, 279—280

prevention of, 279

statutory provisions for, 280

prejudicial to health, nuisance by, 279

property in, 278

P.H.A., 1936, s. 124, provisions of, 278

surface water, highway authority discharging into, where, 278

PONIES. *See title HORSES, PONIES, MULES OR ASSES.*

POOR LAW. *See title PUBLIC ASSISTANCE.*

POOR LAW AUTHORITIES. *See title PUBLIC ASSISTANCE AUTHORITIES.*

POOR LAW IN LONDON. *See title PUBLIC ASSISTANCE IN LONDON.*

POOR LAW INSTITUTIONS. *See title PUBLIC ASSISTANCE INSTITUTION.*

POOR LAW MEDICAL OFFICERS, 282—285

appointment, casual ward, 283

children's home, 283

district, 282

hospital, 282

poor law institution, 282

temporary, 284

casuals, examination of, 285

deputies, appointment of, 283

district medical officer, attendances by, 284

record to be kept of, 284

information to be given by, 284

duties of, 284, 285

organisation of, 283—284

"free choice" system, 282

infants and lunatics, special duties with reference to, 285

inmates of institution, punishment of, 285

institution medical officer, advice to be given to council by, 285

dietary, 285

inmates, classification of, 285

employment of, 285

patients, visitation of, regulations for, 285

special duties of, 285

POOR LAW MEDICAL OFFICERS—*continued.*

introductory note, 282
“medical officer,” meaning of, 282
M.O.H., supervision by, 283, 284
office, dismissal or removal from, 284
tenure of, 284
panel system, 283
 approval of Minister of Health, 283
 procedure under, 283
remuneration, methods of, 283
Public Assistance Order, 1930, provisions of, 282
qualification for, 283
remuneration, 283—284
 basic salary, where, 283—284
senior poor law officer, deemed to be, 283
superannuation, as to, 283

POOR LAW OFFENCES, 286—292

apprentices, discharging without notice, 292
 indentures of, refusal or neglecting to perform terms and conditions of, 292
arrest, power of workhouse master or porter, 288—289
auditor, inspection of documents by, refusal to allow, 291
children’s homes, misbehaviour of children in, punishment of, 289
council, marks stamped on goods of, obliterating or defacing, 290
documents, altering, concealing, destroying, etc., 291
refusal to allow inspection of, 291
family chargeable, leaving, 287
 bastard child, as to, 287
 married woman not having separate property, 287
Poor Relief (Deserted Wives and Children) Act, 1718, provisions of, [287]
proceedings, time for, 287
rogue and vagabond, deemed to be, 287
second conviction for, 287
neglect to maintain, 287—288
 adultery of wife, bona fide belief as to, 288
 refusal to allow wife to return, 288
 work, reasonable, where, 288
 strike, in case of, 288
 wife refusing to live with husband, or living in adultery, 288
 woman neglecting to maintain bastard child, 288
inquiry, refusal to give evidence at, 291
 produce books or documents, 291
institution, introduction of intoxicating liquors into, 290
misbehaviour of inmates of, 288—289
 drunkenness, 288
 refractory, what constitutes, 289
 regulations, failure to observe, 289
 violence, as to, 289
 workhouse master or porter, powers of arrest of, 288, 289
intoxicating liquors, introduction into institutions of, 290
introductory note, 286
miscellaneous, 289—290
officers, assaults on, 291
proceedings, who may take, 286
punishments, authorised, 286
 Public Assistance Order, 1930, under, 286
relief, false statement or non-disclosure by applicant for, 286
 persons in receipt of by, 289
rules and orders, disobedience to, 292
running away, what constitutes, 287
statutory provisions, 288
Vagrancy Act, 1824, idle or disorderly person within, 288—287
work, refusing to perform task of, 291
 proceedings for, conditions of, 291
workhouse, unlawful dealing with goods or property of, 289—290

INDEX

POOR LAW OFFENCES—*continued.*

workhouses, offences by masters and officers of, 290—291
adult inmates, abusing or ill-treating, 290
administering corporal punishment to, 290
body, burial or disposal of, receiving money for, 290
council, misappropriation of money or goods of, 290
fraudulent payments and entries in accounts, as to, 290
proceedings in respect of, 291

POOR LAW OFFICERS. *See* titles POOR LAW MEDICAL OFFICERS; PUBLIC ASSISTANCE OFFICER; RELIEVING OFFICER; PUBLIC ASSISTANCE INSTITUTION MASTER.

POOR LAW SCHEME. *See* title PUBLIC ASSISTANCE.

POOR RELIEF. *See* title PUBLIC ASSISTANCE.

POPULATION. *See* title CENSUS.

PUBLIC HEALTH AUTHORITIES, 293—304

accounts of, audit, as to, 295
aliens, medical inspection of, 299
expenditure on, provision for, 299
borrowing powers of, 302
Public Works Loans Commissioners, loans by, 302
canal boats, "canal boat," meaning of term, 299, n.
infectious disease on, powers of entry and detention as to, 300—301
removal of persons suffering from, 300
registration of, 299
certificate of, 300
refusal of, appeal against, 300
registration authority for, 299
what term includes, 299, n.
county council, transfer of functions to on default by, 303—304
expenses incurred in discharge of, as to, 303—304
customs officer, detention of ship by, 297
grant of pratique by, 297
dangerous drugs in possession of master of ships, authority for, 299
declaration of health, duty of master as to, 297
form of, 297
default by, procedure on, 303—304
transfer of functions to county council on, 303—304
epidemic, endemic and infectious diseases, regulations with reference to, 298—
[298]

enforcement of, 295
entry, powers of, 295
expenses of, contributions of joint board, 301
prescripts for, 302
recovery of, 302
food, examination of imported, statutory regulations for, 299
foreign going ship approaching port in England or Wales, duty of master, 297
definition of, 297
functions, delegation of, 301
health conditions on board ship, flags and signal lights indicating, 297
investigation by M.O.H. of, 297—298
infected ports, M.O.H. to keep list of, 297
infection, measures for the prevention of the spread of, authority carrying out at
[request of master of ship, 298
charges for, 298
infectious diseases, statutory regulations regarding to be carried out by, 298—
[299]

introductory note, 293
joint board, as, 294
constitution of, 294
a body corporate, 294
common seal of, 294
land, power to hold without licence in mortmain, 294
jurisdiction and powers of, 295
P.H.A., 1930, under, 295
[29]

PORT HEALTH AUTHORITIES—*continued.*

- local authority, position of, 301
- regulations, enforcement of, 298
- London, in, assignation of powers of sanitary authority to, 304
- Bye-laws, as to, 304
- delegation of powers of, 304
- food, examination of, 304
- land, acquisition of, etc., 304
- P.H.A. (London) Act, 1936, s. 5, provisions of, 304
- M.O.H. wireless messages to, 297
- officers, and members, protection of, 302
- medical, and sanitary inspectors, regulations affecting, 302
- transfer and compensation of, 302
- order constituting port health district—
 - notice of, 294
 - provisional, where, 294
 - provisions of, 294
 - subsequent, amending or revoking, 295
- port health district, constitution of, 293—294
 - areas of, 294
 - expenses incidental to, recovery of, 295
 - joint boards for, 294
 - Minister of Health, powers of, 294
 - order for, provisions of, 294
 - sanitary districts and authorities, re-naming, 301
- Port Sanitary Regulations, 1933...296—299
 - consents to, 296
 - definitions in, 296
 - making, Minister of Health, powers of, 295—296
 - provisions of, 296
 - purposes of, 296
 - regulations of, 1907, revocation of, 296
 - powers and duties of, P.H.A., 1936, s. 314, provisions of, 295
 - "pratique," grant of, 297
 - meaning of, 297
 - present responsibilities of, 293
- psittacosis, Parrots (Prohibition of Import) Regulations, 1930, as to, 298
- Public Health (Shell-fish) Regulations, 1934, provisions of, 298
- puerperal fever and pyrexia, notification of, 298
- Rats and Mice (Destruction) Act, 1919, application to vessels of, 298
- riparian authorities as, 294
 - contributions to expenses of authority by, 294—303
 - authority, meaning of, 294, n.
 - notice of proposal to make order constituting port health [district, objection by, 294
- ship, medical inspection of, 297—298
 - plague, cholera, etc., occurring after arrival in port, effect of, 298
 - persons on board or embarking, examination of, 298
- ships and boats, general jurisdiction over, 301
 - P.H.A., 1936, application of provisions of, 301
 - vessels of foreign governments, as to, 301
 - H.M. Navy, as to, 301
 - cleansing and disinfecting, 298

PORT HEALTH AUTHORITIES, ASSOCIATION OF, OF THE BRITISH ISLES, 305—306

- activities of, parliamentary, 306
- committees, 305
- constitution, 305
- expenditure, provision for, 306
- meetings, place of, 305
 - voting at, 305
- membership, 305
- objects of, 305
- officers, 305

PORT OF LONDON AUTHORITY, 306—311

- borrowing by, 309
- bridges, roads, quays, locks, etc., power to make, 309

INDEX

POR T OF LONDON AUTHORITY—*continued.*

- by-laws, of, 311
- constables, appointment of, 310
 - metropolitan police force, powers of, 308
- constitution of, 294
 - appointing and electoral bodies, 307
 - chairman and vice-chairman, 307
 - elections, 307
 - office, term of, 308
- craft and boats, registration of, 311
- docks and works, provisions relating to, 309—310
 - particular parts of, 311
 - supply of water to, dredging, etc., 309
 - vessels in, regulations for, 310
- entrance locks, bridges carrying highways over, duty to maintain and repair, 311
- financial provisions, 309
 - borrowing, etc., powers of, 309
 - port stock, issue of, 309
- goods, certificates or warrants for, 310
 - dangerous, exclusion of, 310
 - hazardous, marking, 310
 - possession for, 310
- introductory note, 306
- London, Port of, limits of, 308
- members, election of, 307
 - office, term of, 307
 - jury service, exemption from, 307
- Merchant Shipping Act, 1906, limitation of liability under, 309
- meters and weighers, appointing and licensing, 310
- metropolitan police force, powers and privileges of, 308
- Port of London Act, 1908, provisions of, 306
 - (Consolidation) Act, 1920...307
 - amending Acts, 307, n.
 - prosecutions under, 310
- port stock, issue of, 309
- powers and duties, in general, 309
- railway from North Woolwich branch of L. & N.E. Ry. to Gallions Reach, duty
 - [to maintain, etc., 311]
- revenue, main sources of, 309
- River Thames, general powers and provisions relating to, 310—311
 - docks, piers, etc., to grant licences for construction of, 310
 - dredging, etc., 310
- Port of London (Consolidation) Act, 1920, prosecution under, 310
 - water, flow and purity of, preservation of, 310
- sanitary authority for, 308
 - jurisdiction, area of, 308
- Surrey Canal, duty to maintain, etc., 311
- watermen and lightermen, licensing, 311

POSITIVE COVENANTS, 311—313

- agreements containing, 312
- definition of, 311
- enforcing, 313
 - covenants in form positive but in substance negative, 313
 - damages, 313
 - injunction, 313
 - specific performance, 313
- housing schemes, open spaces, roads, etc., acquisition of land for, 311—312
- introductory note, 311—312
- land, running with the, 312—313
 - Austerberry v. Oldham Corp.; Horsey Estates v. Steign*, decisions in, 312
 - statutory provisions as to, 312
- local authorities, affecting, 311—312

POSTAL, TELEGRAPH AND TELEPHONE SERVICES, 313—319

- “company,” Postmaster-General included in terms, 317
- gas and water pipes, etc., interference with, 315, 317

- POSTAL, TELEGRAPH AND TELEPHONE SERVICES—continued.**
- introductory note, 313—314
 - local authorities and, under Post Office Acts, 316
 - Telegraph Acts, 316—317
 - post and telegraph offices, contributions by local authorities to cost of provision [of, 316
 - private property, user of for purposes of, 314
 - railways and canals, right to construct and maintain works over, 313
 - ships, application of wireless telegraphy legislation to, 315
 - “telegraph,” meaning of, 314
 - “telegraph,” definition of, 314, 317
 - “telephones” and “wireless telegraphy” included in, 314
 - Telegraph Acts, differences arising from application of, remedies and adjustments as to, 317
 - extent of, 315
 - licences, application to, 319
 - provisions of, 314—315
 - company, powers of, 316—317
 - lines, right of Postmaster-General to place, maintain or alter, 315
 - wires, danger from, 315
 - works, removal from private property of, 314—315
 - telegraphic business, conduct of, 315—316
 - acts or defaults of servants, damage arising out of, liability for, 315
 - telegraphs, construction and maintenance of, 314—315
 - streets or public roads under, etc.—
 - breaking open, etc., 317, 318
 - consents to, 319
 - damage, compensation for, 317
 - determination of, 317
 - dangerous post, removal of, 319
 - extent of roadway to be opened up, 318
 - gas and water pipes, interference with, 315, 317
 - notice of, 317
 - work, superintendence of, 317
 - placing and maintaining, 315, 317—318
 - repairs, payments for, 318
 - restrictions relating to, 318
 - traffic regulations, as to, 319
 - works, completion of, 318
 - depth and course of, 318
 - telephones, Acts relating to, 316
 - wireless telegraphy, blind persons, special licences for, 316
 - statutory provisions relating to, 316
 - “work,” meaning of, 317
- POSTMASTER-GENERAL, 320—324**
- appointment of, 320—321
 - highways, erection of pillar boxes on, statutory authority for, 322
 - House of Commons, election to and voting in, 320
 - immunity of, 321
 - postal packets, for loss or damage to, 321
 - public office, from holding, 321
 - servants, from wrongful acts of, 321
 - service, jury, from, 321
 - introductory note, 320
 - land, acquisition by, 322
 - compulsory, procedure on, 322
 - local taxation licences, issue of, 320
 - mails, right to carry, monopoly of, 320
 - what included in, 320
 - money orders, etc., issue of, 320
 - National Health Insurance stamps, issue of, 320
 - old age pensions, payment of, 320
 - post office, control of business of, 320
 - general activities of, 320
 - origin of, 320
 - premises, early closing of, 323
 - combined with other business, where, 323

INDEX

POSTMASTER-GENERAL—*continued.*

post office, premises, weekly half-holiday, as to, 323
“post office,” what term includes, 322
post offices, new, contributions towards by local authorities, 323—324
borrowing, powers of, 324
postal packets, registered, loss or damage to, compensation for, 321
undelivered, return of, 321
posts and post offices, establishment of, 321—322
expenses of, 321
powers of, 321—322
postal packets, collection, transmission and delivery of, 321—322
detention of, 322
posts and post offices, establishment of, 321
regulations, procure the making of, 322
private places, post office, letter boxes in, 323
remuneration, 321
staff, appointment of, 320
stamps, etc., sale of, 320
telegraph services, telephone and wireless, control of, 320

POST-MORTEM EXAMINATIONS, 324—326

fees for, 325
inmate of institution, on body of, 325—326
jury, on request of, 325
medical witness, by, 325
death due to neglect of, where, 325
refusal to make, penalty on, 323
without inquest, power of coroner to order, 325
places for holding, charges for use of, 324
provision of, 324
removal of body to or from, 325
powers of coroner to order, 325
report of, writing, necessity for, 325

POTATOES. *See title SEEDS.*

POULTRY FARMS. *See title DERATING.*

POUND, THE, 326—328

Acts, references to in early, 327
animals, *damage feasant*, or taken in distress, 327
in, treatment of, 327
supply of food, etc., by third parties, 327
breach, action for damages in, 327
penalties for, 327
erection and maintenance of, statutory authority for, 327
historical note, 326—327
land, purchase of for purposes of, 327
London, in metropolitan borough councils, powers of, 328
private, 326
straying cattle, as to, 327
sale of, 327
three miles from place of distress, as to, 327
Coaker v. Wilcockes, decision in, 327

POWERS. *See title ULTRA VIRES.*

POWERS OF OFFICERS. *See title DUTIES AND POWERS OF OFFICERS.*

PRECAUTIONS, AIR-RAID, 328—330

advice and instruction to public as to, 320
Air Raid (Fire Schemes) Regulations, 1928, provisions of, 329
(General Schemes) Regulations, 1938, provisions of, 328—329
Precautions Act, 1937, provisions of, 328
air raid wardens, organisation of services, 329
anti-gas protection of houses, recommendations as to, 337—338

PRECAUTIONS, AIR-RAID—continued.

- anti-gas training, civilian, 336—337
 - accident or injury caused by, compensation for, 336—337
 - officer or servant of local authority, as to, 336—337
 - local instruction in, 336
 - schools for, 336
 - syllabus of, 336
 - medical instructions, 335
- arrangements for, casualties, clearing stations, first aid, etc., 329
 - central control and co-ordination, 329
 - civil population, transfer of, 329
 - damaged or unsafe buildings, dealing with, 329
 - debris, clearance of, 329
 - equipment, appliances, etc., storage and maintenance of, 329
 - highways, etc., lighting of, restriction and regulation of, 329
 - streets, buildings, etc., decontamination and repair [of, 329]
- information and reports, receiving and recording, 329
- personnel, recruiting and training, 329
- poison gas, detection of, 329
- premises for war service, protection of, 329
- respirators, distribution of, 329
- shelters, provision of, 329
- warnings, receiving and giving, 329
- base hospitals, 336
- civil population, plans for the transference of, 330
- first aid posts, 338
 - cases to be dealt with, 338
- Home Secretary, regulations by, 330
- houses, anti-gas protection of, 337—338
- introductory note, 328
- local authorities, administration of Act by, 334
 - compulsory purchase of land by, 330
 - expenditure by, approval of, 330
 - December 31, 1936, incurred after, 334
 - grants in aid of, 330
 - calculation of, 332—334
 - subsequent investigation of, 331
 - joint committees of, 330
 - powers and duties of, 331—334
 - borough and urban district councils, 331
 - civil population, evacuation of, 332
 - co-operation by, 332
 - county borough councils, 331
 - county councils, 331
 - financial provisions for, 332—334
 - land, compulsory purchase of, 330, 332
 - prescribed functions, discharge of, 332
 - rural district councils, 331
 - schemes by, approval of, 332
 - submission of, 330
 - London, in, Common Council and metropolitan borough councils, grants to, [calculation of, 338—339]
 - L.C.C., Common Council and metropolitan borough councils, [general scheme by, 338—339]
 - metropolitan borough councils, borrowing powers of, 339
 - parliament, regulations and orders to be laid before, 331
 - regional inspectors, 335
 - scheme, protection otherwise than by, expenditure for, 330
 - schemes, approval or amendment of, 330
 - submission of, 330
 - Secretary of State, powers and duties of, 329—331

PRECEDENCE. *See title CEREMONIES.*

PRECEPTS, 340—347

- assessment committees, 346
- catchment boards, 346

INDEX

PRECEIPTS—*continued.*

- "contribution orders," 341
- county councils, of, 342—345
 - amount due under, 345
 - payments required, exceeding, 343
 - less than, 343
- basis of, poundage principle, 342
 - R. & V.A., 1925, prior to, 342
- contents, form, mode of issue, etc., 342
- form, 343—344
- issue, preliminaries to, 342—343
- payment deferred, when, 345
- payments, overdue, interest on, 345
- definition and purpose, 340
- enforcement of, 346—347
 - mandamus*, by, 347
 - receiver, by appointment of, 347
- issue of, code of rules for, 341
 - general provisions as to, 341
 - neglect of, loss incurred by, 341
- joint boards, 346
- London, borough council, failure to meet by, receiver, appointment of, 347
 - L.C.C., powers of, 347
 - London Government Act, 1899, s. 11 (2), provisions of, 347
 - Metropolitan Police Act, ss. 23—30, under, 347
- parish councils and parish meetings, 345
- precepting authorities, 341
 - committees and joint boards, 341
 - metropolitan police district, receiver of, 341
 - water board, 341
 - parish meeting, in case of, 341
 - port health authorities, 341
 - railway assessment authority, 341, 346
- rating authority, to be sent to, 341, 342

PRELIMINARY DRAFT SPECIAL LIST. *See title VALUATION LIST.*

PRELIMINARY STATEMENT. *See title TOWN PLANNING SCHEMES.*

PRESERVATIVES, 348—351

- articles which may not contain, 349
 - preservative naturally present, where, 349
- artificial colouring matters, use of, 350
- benzoates, 349
- benzoic acid, 349
- borax, 349
- boric acid, 349
- food and drugs authority, officer of, powers of, 350
- fluorides, 349
- forbidden, 349
- introductory note, 348
- milk, vessels used for, cleansing, as to, 350
- permitted in specified cases, 349
 - "preservative," definition of, 349
- preserved food, importation of, 351
- Public Health (Preservatives, etc., in Food) Regulations, 1925, provisions of, [348]
 - enforcement of, 348, 350
 - offences and penalties, 350
- sulphites, 349
- sulphur dioxide, 349
- use of, declaration or notice of, 349—350
 - labelling, 350

PRESIDING OFFICER. *See title ELECTIONS.*

PRESS, ADMISSION OF. *See title ADMISSION TO MEETINGS.*

- PREVENTION OF CRUELTY TO CHILDREN, 352—358**
- begging, child or young person under—
 - seventeen, by, 355
 - sixteen, procuring, causing or allowing to beg, 355—356
 - brothels, allowing juveniles to be in, 354
 - child under fourteen, person singing, performing, etc., in public place accompanied by, 356
 - victim, age of, 353
 - Children and Young Persons Act, 1933—**
 - proceedings under, 357
 - evidence, accused, wife or husband of, 358
 - child of tender years by, 358
 - corroboration of, 358
 - insurance, questions of, 358
 - provisions of, 352
 - arrest, powers of, 357
 - local authorities under, 353
 - cruelty, offence of, what constitutes, 353
 - girl under sixteen, marriage of, 354
 - seduction or prostitution, etc., of, 354
 - person having custody, charge, etc., of, responsibility as [to, 354
- health, injury to, what term includes, 353
- intoxicants, etc., offences with regard to, 354—355
- bar, allowing children in during "permitted hours," 354
 - exceptions to, 354
 - "bar," meaning of,
 - child under five, giving intoxicating liquor to, 355
 - seven, drunken person in charge of, 358
 - children, sale of liquor to, 353
 - railway refreshment rooms, as to, 354
 - tobacco and cigarettes, sale to persons apparently under sixteen, 355
- local authorities, institution of proceedings by, 352
- National Society and police, co-operation with, 353
 - summary or by indictment, 353
 - powers and duties of, 352—353
- offenders, age of, 353
- legal responsibility, as to, 353
 - persons apparently under sixteen—
 - sale of tobacco and cigarettes to, 355
 - automatic machines, as to, 355
 - smoking in public place, powers of constables as to, 355
 - risks, exposure to, 356—357
 - entertainments, provider of, precautions to be taken by, 356—357
 - failure to observe, penalties for, 357
 - societies for, subscriptions by local authorities to, 353
 - vagrant accompanied by child of five or more, offence by, 356

PREVENTION OF DISEASE IN SCHOOLS, 358—367

- Acts and regulations, in general, 359—361
- Public Elementary Schools, Code of Regulations for, 359—360
 - Public Health Acts, provisions of, 359
 - special services, Board of Education (Special Services) Regulations, 1925... [366

child, infective, attendance at school, prohibition of, 359

"contacts," exclusion of, 362, 365

in cases of—

- chicken-pox, 366
- diphtheria, 366
- enteric and erysipelas, 366
- influenza, 367
- measles, 366
- mumps, 366
- small-pox, 366
- tuberculosis, 367
- whooping cough, 366

education and sanitary authorities, co-ordination between, 361—362

infection, sources of, special inspection as to, 367

INDEX

PREVENTION OF DISEASE IN SCHOOLS—*continued.*

- introductory note, 358—359
- methods and practice, 364—366
 - exclusion, 364—365
 - school closure, 364
 - Sunday schools, as to, 364
 - overcrowding, dangers of, 362
- sanitary authority, closure of school by, 364
 - notice of, 364
- school, notifiable disease in, principal of school to furnish list of non-boarders to [local authority, 359
- schools, closing, 360, 363, 364
 - exclusion of pupils from, 360, 363, 364
 - medical inspection at, 360
 - sanitary arrangements for, 362

PRIMARY EDUCATION. *See title ELEMENTARY EDUCATION.*

- PRISONS, 367—370
 - bye-laws affecting, *Gorton Local Board v. Prison Comms.*, decision in, 370
 - classification of, 368
 - convict, 368
 - local, 368
 - Commissioners of, appointment of, 369
 - duties of, 369
 - number of, 369
 - remuneration of, 369
 - reports by, 369
 - discontinued, sale of, 368, 369
 - furniture and effects of, 368
 - houses of correction, abolition of, 367
 - introductory note, 367—368
 - justices, visiting committees of, 369
 - single justice, powers of, 369
 - maintenance, cost of, 368
 - officers of, superannuation of, 370
 - rating of, 370
 - regulation of, rules for, 368

PRIVATE ACTS, 371—374

- Bill, private, distinguishes from public Bill, 372
 - promotion of, procedure on, 372
- citation of, 371
- construction of, 373
 - promoters, against, 373
 - saving clauses, as to, 373
- Estate or Inclosure, 373
 - existing rights, infringement of, compensation for, 373
- formula, introductory, 371
- historical note, 371
 - "hybrid Bills," 372
- local Acts, distinguished from, 373
- "private Act," meaning of term, 371—372
- repeals, as to, 374

PRIVATE BILL. *See titles BILLS, PARLIAMENTARY AND PRIVATE; PROVISIONAL ORDERS.*

- PRIVATE IMPROVEMENT EXPENSES, 375—381
 - charging orders, power of local authority to grant, 380
 - Housing Act, 1936, under, 381
 - declaration as to, appeal against, 378
 - establishment expenses, charge in respect of, 379
 - London, as to, 381
 - owners, liability of, limitation of, 379
 - preliminary note, 375—376
 - P.H.A., 1936, provisions of, 375—376
 - premises, constitute a charge on, 377
 - private street works, executed by urban authority on default of owner, 376

INDEX

PRIVATE IMPROVEMENT EXPENSES—*continued.*
 recovery of, county court, jurisdiction of, 379
 Housing Act, 1936, under, 381
 P.H.A., 1875, 1925, under, 377
 county court proceedings, 377
 instalments, payment by, 377
 rate, by levy of, 377
 P.H.A., 1936, under, 378—379
 instalments, payment by, 378
 period in which, 378
 interest, rate of, 378—379
 occupier from, deduction from rent by, 378
 owner, liability of, 378
 ownership, change of, where, 378
 works in respect of which, 380, 381

PRIVATE STREETS, 382—410
 carriageways and footways, varying width of, 388
 definitions—
 “owner,” 384—385
 “private street,” 383—384
 “rack-rent,” 384, n.
 “street,” 383
 street, premises “fronting, adjoining or abutting” upon, 385—386
extra commercium, premises held to be, 391—392
 introductory note, 382—383
 London, as to, 410
 owner, 384—385
 agents, 385
 lessees, 385
 trustees, mortgagees, etc., 385
 paving, manner of, 387
 private street works, expenses of—
 defrayment of, 409—410
 local authority, accounts to be kept by, 409
 borrowing powers of, 410
 Private Streets Works Act, 1892—
 appeals, as to, 409
 application and construction of, 398
 expenses, contribution by local authority to, 409
 final apportionment, 406—407
 notices of, 406
 objections to, 407
 local authorities, powers of under, 398—399
 requirements by, 399
 “paving, metalling and flagging” what included in term, 399
 procedure under, 398—399
 “part of a street,” as to, 398—399
 provisional apportionment, etc., 399—401
 amendment of, 406
 amounts charged, premises and owners, statement as to, 400
 approval of, 402
 basis of, considerations as to, 400
 exemptions from, 401—402
 churches, etc., 401
 Crown property, 401
 premises *extra commercium*, 401
 Railway and Canal companies, 401—402
 River Thames, Conservators of and Port of London Authority, 401
 expenses, recovery of, 407—408
 objections to, 403—404
 grounds of, 403—404
 hearing and determination of, 405
 notice of, 403
 procedure on hearing, 405
 proceedings, cost of, 405
 plans, estimates, etc., deposit of, 402
 inspection of, 403

INDEX

PRIVATE STREETS—*continued.*

Private Streets Works Act, 1892—*continued.*
provisional apportionment, etc.—*continued.*
 publication of, 402
 specification, preparation of, 399
 works, sewerage and draining, as to, 399
 under, expenses of, estimate of probable, 399—400
 execution of, 406

P.H. Acts code—

 appeals against decisions under, 397
 application of, 386
 local authority, works required by, 387—389
 levelling, 388
 lighting, 388
 paving, 387—388
 street, repeated requirements in same, 388—389
 part of street, dealings with, 386—387
 public footway or repairable by inhabitants at large, where, 387
 pave, notice to, 380—391
 form of, 389
 service of, 390
 ultra vires as to part of works, 389
 works, time for execution of, 390
preliminary procedure, plans, specifications, etc., 389
premises exempted from, 391—392
 churches, etc., 391
 Crown property, 392
 premises *extra commercium*, 391—392
P.H.A., 1875, s. 150, powers of urban authority under, 386
works, execution of, 390
 default of owners in, powers of local authorities in, 392—393
 expenses of, apportionment of, 393—394
 contribution by local authority to, 397
 recovery of, 394—397
 instalments, payment by, in case of, 396
 private improvement expenses, as, 396
 proceedings, county court, 395
 summary, 395
 statutory charge, enforcement of, 396
sewering, 388—389
 houses, individual or groups of, as to, 389
statutory codes relating to, 382—383
street, extended sense of, applicability of, 384
Towns Improvement Clauses Act, 1847, s. 53, proceedings under, 410
 expenses, recovery of, 410

PRIVIES. *See title SANITARY CONVENiences.*

PRIVY COUNCIL, 411—413

 Board of Trade a committee of, 411
 borough, incorporation of, applications for charter of, 411
 burials and burial grounds, Orders in Council as to, 412
 Cinematograph Fund, accounts of, 411—412
 control and administration of, 411—412
 General Medical Council, General Nursing Council and Pharmaceutical Society,
 [nomination of members by, 412
 introductory note, 411
 members of, style and precedence of, 411
 Petroleum Acts, Orders in Council relating to, 413

PROBATION OFFICERS, 413—415

 definition, 413
 expenses of, 414
 London, petty sessional divisions of, 415
 statutory provisions applicable to, 415
 probation areas, 412
 combined, 414
 committees, duties of, 414

PROBATION OFFICERS—*continued.*
 probation, system of, 413
 work, expenses of, liability of local authorities, 414, 415
 Treasury grants, as to, 415
 probationers, maintenance of, 415
 salaries, payment of, 414
 statutory provisions affecting, 413
 superannuation of, 415
 Probation Officers Superannuation Rules, 1926, provisions of, [415]
 voluntary societies, members of, 415

PROCEDURE. *See* titles **COMMITTEES**; **MEETINGS**.

PROCESSIONS, 416—418
 introductory note, 416
 London, in, Commissioners of Police, powers of, 417—418
 obstruction in streets during, regulations for preventing, 418
 nuisance by, 416
 persons organising, or taking part in, conditions upon, 417
 public, defined, 417
 offensive weapons, persons carrying, as to, 417
 Public Order Act, 1936, provisions of, 417
 public, order prohibiting, 417
 Commissioners of Police, by, 417, 418
 compliance with, failure of, offence and penalty, 417
 preservation of, conditions for, 417
 police, powers of, 417
 right to hold, as to, 416
 routes, buildings, etc., safety of, 418
 control of, statutory provisions for, 416—417
 unlawful assemblies, whether, 416

PROFESSIONAL AUDIT. *See* title **AUDIT**.

PROFESSIONAL AUDITORS. *See* title **AUDITORS**.

PROHIBITION, WRIT OF, 419—424
 application for, 424
 affidavit in support of, 424
 costs of, 424
 county court judge, against, 424
 criminal proceedings in, 424
 parties against whom, 424
 pleadings, discretion of court as to, 424
 refusal of, appeal against, 424
 circumstances in which writ will lie, 419—421
 inferior court—
 judge of, altering or rescinding his judgment, 419
 personal bias of, 419
 jurisdiction of, excess or absence of, 419
 alternative remedy for, 420—421
 appeal, by way of, 420—421
 preliminary question of fact, decision as to, 420
 statutory powers of, 420
 test as to, 419—420
 wrongfully assumed, where, 420
 county court judge, against, 424
 jurisdiction, arising by statute, where, 421—422
 waiver of objection to, 421—422
 nature of, 419
 procedure and costs, 424
 where lack of jurisdiction appears on record, 421
 non-apparent, 421
 tribunals, against, 422—423
 arbitrator, 422
 government departments, etc., 423
 inferior, exercising a judicial or quasi judicial function, against all, 422
 statutory bodies exercising judicial or quasi-judicial functions as to, 422

INDEX

- PROJECTIONS OVER HIGHWAYS, 425—427
buildings, corners of, rounding off, 426
compensation for, 426
danger, a source of, where, 425
house or building, erected or placed against, 425
local authority, removal by, 425
occupier, notice to remove or alter, to, 425
introductory note, 425
London, flags, etc., advertisement by, consent of borough council to, 427
"meat or offal, etc." hanging out, prohibition of, 426
nuisance by, alteration or removal of, 426—427
sale, exposing things for over carriage or footways, as to, 427
statutory provisions as to, 426—427
- obstruction, deemed to be, 425
rails, beams, etc., over streets, placing, consent of local authority for, 426
statutory provisions as to, 425
- trees, overhanging, etc., notice to lop or cut, 426
owner, default of, powers of local authority on, 426
- wireless installations, wires in connection with, bye-laws controlling, 426
- PROMENADES. *See* title ESPLANADES, PROMENADES AND BEACHES.
- PROMOTION OF BILLS. *See* title BILLS, PARLIAMENTARY AND PRIVATE.
- PROPERTY. *See* titles CORPORATE LANDS; DISPOSAL AND UTILIZATION OF LAND; GIFTS OF LAND AND OTHER PROPERTY.
- PROPOSALS. *See* title VALUATION LIST.
- PROSTITUTION. *See* title OFFENSIVE BEHAVIOUR.
- PROVISIONAL APPORTIONMENT. *See* titles PRIVATE STREETS; VALUATION [LIST].
- PROVISIONAL ORDERS, 428—436
applications for, time and mode of making, instructions as to, 429
Board of Education, by, 434
land, compulsory acquisition of, 434
Trade, by, 433—434
gas, 433—434
confirmation of, 428—429
confirming Bill, 429
Crown Lands, by Commissioner of, 435
ancient monuments, preservation of, 435
Development Commissioners, by, 435
land, acquisition of, 435
meaning of, 428
Minister of Agriculture and Fisheries, by, 436
agricultural land, utilization of, 436
fisheries, freshwater, 436
land drainage, 436
Health, by, 429—433
application for, purport of, advertisement of, 429
brine pumping, subsidence of land due to, compensation dis-
[trict, formation of, 432
- county districts, review of, 430
housing 431
land, compulsory acquisition of, 430
local Acts, repeal and alteration of, 431
M.O.H. appointment of, union of districts for, 430
mental deficiency, 433
objections, inquiry into, 429
petition against, presentation of, 429
port health authorities and joint boards, as to, 431
procedure, 429
public bodies, transfer of powers of, 430
P.H.A., 1875, unrepealed sections of, as to, 430
river pollution, 432

PROVISIONAL ORDERS—*continued.*Minister of Health, by—*continued.*

smoke and noxious fumes, 432

Alkali, etc., Works Regulation Act, 1906, s. 8, provisions of,
[432]

town and country planning, 431

water, 431—432

Transport, by, 434—435

electricity, 434

harbours, 435

light railways, 434

railways and canals, 435

tramways, 435

Minister's powers, report of committee on, 420

navigation rights, varying, consent of Minister of Transport to, 435

Provisional Order Confirmation Acts, 429

repeal alteration or amendment of, 429

Secretary of State, by, 433

explosives, 433

marriage, validity of, 433

military lands, 433

pensions, police, 433

workmen's compensation, 433

PUBLIC ADMINISTRATION, INSTITUTE OF, 437—440

conferences and meetings of, 438

constitution of, 438

contacts abroad, 440

council of, 438

university representatives on, 438

executive work of, 437

groups, overseas, 437

regional, 437, 438

local government, problems of administration in, consideration of, 430

membership, classification of, 438

associates, 438—439

fellows, 438

members, 438

qualifications for, 438

objects of, 437

activities in pursuance of, 437—440

offices of, 440

public services, members of, promotion of good relations between, 437

publication of, 440

research by, 440

“vocational” institutions, distinguished from, 440

PUBLIC ANALYST. See title ANALYST.

